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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-598

EDUCATION/INSTRUCCION, INC., ET ALS
Petitioners

vs.

THOMAS MOORE, ET ALS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

IGOR I. SIKORSKY, JR.
Attorney for Petitioners
111 Pearl Street
Hartford, Connecticut 06103

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EDUCATION/INSTRUCCION, INC., ET ALS
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v.

THOMAS MOORE, ET ALS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Education/Instruccion, Inc., Benjamin Dixon, Julia Ramos and A. Boyd Hinds, Jr., pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit affirming the judgment rendered on August 21, 1974 affirming (by a divided Court) the judgment of the Honorable T. Emmet Clarie, U.S. District Court for Connecticut.

I. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit entered on August 21, 1974, is at this time unreported. It is set forth in Appendix A, pp. 1a *et seq.*

The opinion of the United States District Court for the District of Connecticut, entered on June 13, 1973, is also unreported and is attached as Appendix B.

II. JURISDICTION

This suit was originally commenced in the United States District Court with jurisdiction sought pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S. Code Sect. 2000d *et seq.* and Title VIII of the said Act, 42 U.S. Code Sect. 3601 *et seq.* as well as the Fifth and Fourteenth Amendments to the Constitution of the United States and Section 42 U.S.C. 1983. The District Court entered judgment dismissing the complaint (Appendix A). The decision of the District Court was appealed to the United States Court of Appeals for the Second Circuit, which, on August 21, 1974, entered a judgment affirming the order of the District Court (Appendix B). The jurisdiction of the Supreme Court is invoked under Rule 19 of the Supreme Court Rules and Title 28, United States Code, Section 1254 on the ground that review by the Supreme Court by a Writ of Certiorari is sought of a judgment of the affirmance on appeal by the United States Court of Appeals for the Second Circuit.

III. QUESTION PRESENTED

Does the one-man, one-vote rule apply to Regional Planning Agencies which exercise planning and other government functions under state law and which directly control the flow of federal funds into the metropolitan region under federal law?

IV. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

Constitutional Provisions: Fourteenth Amendment

Statutes: Conecticut General Statutes § 4-124.

Title 42, United States Code, § 3101 and § 3334; Title 28, United States Code, § 1254, Rule 19, Supreme Court Rules.

Regulations: HUD Regulation CPM 6041.1A, HUD Circulars MPD 6415.1A, 6415A, 6415.2A and 6415.3.

V. STATEMENT OF THE CASE

Petitioners, a charitable, non-profit corporation, and named individuals representing minority citizens of Hartford, brought suit against the Capitol Region Planning Agency and Capitol Region Council of Governments, in the United States District Court for the District of Connecticut at Hartford, Connecticut. The action involved two counts, the first alleging that the Capitol Region Planning Agency (CRPA) consistently failed to comply with federal statutes and regulations which mandate low income and minority representation in the original planning process. After investigation by the Department of Housing and Urban Development (HUD), the plaintiffs' allegations were determined to be valid with regard to citizen participation and lack of equal opportunity employment, resulting in the rescission of federal certification of CRPA as the Area Planning Office (APO), and the withdrawal of federal funding for that agency. Consequently, Clarie, J., never considered Count I since the issue was moot.

The Second count alleged that the consolidation of CRPA and the Capitol Region Council of Governments (CRCOG) would violate the plaintiffs' rights under the Fourteenth Amendment to the Constitution of the United States in that their votes on the resulting organization would be unconstitutionally diluted when they elected their representatives to said organization. Pursuant to Conn. Gen. Statute § 4-124(c) (1971 Public Act 821) and the terms of the merger between CRPA and CRCOG, the City of Hartford, while containing over 24 percent of the region's population, sends only four representatives to the thirty-two member council, approximately 12 percent representation. (The statute provided Hartford with only one representative on the new COG but the representation was increased to four delegates as a result of merger negotiations). This dilution of representation of the City of Hartford also results in the under-representation of minority residents because approx-

imately 85 percent of the minority population in the region resides in Hartford.

The District Court (Clarie, J. presiding) dismissed the action (Appendix A). The Court of Appeals for the Second Circuit affirmed (Appendix B).

While this action was pending before Judge Clarie in the District Court, the United States Supreme Court decided the cases of *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973) and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973). The issue presented here is whether, in light of the Supreme Court decisions in *Salyer* and *Toltec*, Judge Clarie and the Second Circuit correctly held that the proposed regional council of governments is not subject to the one-man one-vote requirement.

VI. ARGUMENT

A. The Equal Protection Clause of The United States Constitution requires that representation on the proposed COG be adjusted for population differential between the member towns

In a series of cases, the United States Supreme Court has held that the United States Constitution requires that "as nearly as is practicable one man's vote . . . is to be worth as much as another's." *Wesberry* v. *Sanders*, 376 U.S. 1, 8, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964); *Reynolds* v. *Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

In *Avery* v. *Midland County*, 390 U.S. 474, 88 S. Ct. 114, 20 L. Ed. 2d 45 (1968), the Supreme Court applied this "one-man, one-vote" principle to the election of County Commissioners and held that a qualified voter in a local election has a Constitutional right to have his vote counted with substantially the same weight as that of any other

vote, where the elected official exercises "general governmental powers over the entire geographic area served by the body." 390 U.S. at 487-8.

B. A substantial Federal question is presented, to wit, whether "one-man, one-vote" applies to regional agencies which control the flow of substantially all Federal funds to municipalities?

The CRPA-CRCOG merger presents the question of whether the "one-man one-vote" principle applies to a regional agency statutorily composed of one elected official from each participating member. If the doctrine applies, the structure of the new Council of Governments (COG) is unconstitutional.

The series of cases establishing and applying the one-man one-vote principle has been complicated by the recent U.S. Supreme Court cases of *Salyer* v. *Tulare Water District*, *supra*, and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, *supra*. The extent to which these cases limit the application of *Reynolds* v. *Sims*, *supra*, and *Avery* v. *Midland County*, *supra*, and other cases is as yet unclear. The lower court decisions in the present case demonstrate that uncertainty and the need for further clarification by the Supreme Court.

In *Salyer*, the court held that California statutes permitting only landowners to vote in "water storage district" elections and apportioning votes according to the assessed valuation of the land within the districts, did not violate equal protection. The court was considering an exception to the application of the one-man, one-vote rule. In *Avery*, the court had reserved decision on that exception:

> Were the (governmental unit) a special purpose unit of government assigned the performance of functions affecting definable groups of constituents, we would have to confront the question whether such bodies may

> be apportioned in ways which give greater influence to the citizens most affected by the organization's functions. 390 U.S. *supra* at 483-484.

In analyzing various types of government units, the court seemed to divide them into three types. The first are those units exercising general governmental powers as defined in *Avery* v. *Midland County, supra.* These must follow the rule of *Reynolds* v. *Sims.* The second group of governmental units exercises more limited powers, but powers which have sufficient impact throughout the district to justify the application of the *Avery* princip'. Cited examples are *Bianchi* v. *Griffing,* 393 F.2d 457 (2d Cir. 1968) and *Hadley* v. *Junior College District,* 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).

The third group, which is excepted from application of the *Reynolds* one-man, one-vote rule, represents those governmental units whose duties are so far removed from normal governmental activities and whose actions so disproportionately affect select groups that a popular election in compliance with *Reynolds* might not be required. The court in *Salyer* then concluded:

> "(T)he appellee water storage district, by reason of its *special limited purpose* and of the disproportionate effect of its activities on landowners as a group is the sort of exception to the rule laid down in *Reynolds* which the quoted language from *Hadley, supra,* and the decision in *Avery, supra,* contemplated. *Salyer* v. *Tulare,* 35 L. Ed. 2d at 666." (emphasis added).

The Supreme Court found that a water storage district was a governmental . nit with a very specific purpose, that is performed specific functions which were not "normal governmental" functions, that its effect was solely upon landowners, and that the activities and projects were financed by landowners in proportion to the benefit received by those landowners, which benefit was directly proportional to the acreage owned by the landowners.

The issue presented in the instant petition is whether Regional Councils of Government, which serve as the conduit of all Federal Funds, fall into the general requirement of *Avery* or the exception of *Salyer* and *Toltec*.

C. The Council of Governments is a substantial and significant Governmental Unit

Clearly, the proposed COG performs important governmental functions with region-wide impact. One of the major duties of the agency is to create an area-wide plan which directs the growth of the region. This plan provides for the placement within the region of the following major governmental capital development projects: low income housing, highways and secondary roads, mass transportation, water and sewer systems, parks and environmental planning. Once the plan is developed, the granting of federal funds within the region depends on the proposal's consistency with the regional plan.

For examples, proposals for federal funding of local programs under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C.A. 3334), Title IV of the Intergovernmental Cooperation Act of 1968 and Section 102(2)(c) of the National Environment Policy Act of 1969 must be submitted to the regional planning agency (in this case the COG) for comment. Further, the United States Department of Housing and Urban Development has conditioned the granting of certain HUD funds upon the existence of such an organization. HUD Circulars MPD 6415A, 6415.2A, 6415.3. The designation of only the highest elected official of the component governments as delegates to the agency further emphasizes the significance attributed to the activities of the proposed COG.

Most regional planning agencies are designated "Area Planning Offices" under the interlocking federal regulations implementing the Federal Housing Act of 1964, the Housing

and Urban Development Act of 1965 and the Intergovernmental Cooperation Act of 1968. Such a designation as APO makes the agency a powerful regulatory body in the intricate federal system.

For example, HUD regulation CPM 6041.1A, issued under authority of Section 701 of the Housing Act of 1964, provides that federal funds be paid to a regional organization for study and planning development of the region. The regulations establishing the powers and duties of the APO emphasize the essential governmental scope of the agency. As one example, the APO is not only given the authority to establish housing goals for the entire region, but also the power to prepare zoning and subdivision legislation.

Since the requirements and goals established by the APO determine the priority and granting of federal funding, the goals and guidelines in effect determine the pattern of growth for the region. If, for example, the APO is dominated by the white, middle class suburbs, the patterns of past discrimination for local minorities and the unrepresented urban center will most likely be perpetuated through housing and planning grants affecting the region.

Regulations MPD 6415.1A, MPD 6415.2A and MPD 6415.3, issued under the Housing and Urban Development Act of 1965 (42 U.S.C.A. 3101) encompass the APO system as part of the implementation process of HUD capital grants and loan programs. Among the many duties conferred by these regulations are the authority to receive and expend federal funds and the power to determine whether an area has sufficient planning to permit applications filed by local governmental units to be considered by HUD. An agency is exercising obvious governmental functions when it is empowered to prohibit the federal government from even considering an application for funding from a municipality.

Designation as an APO also enhances the power of the proposed COG through its inclusion in the A-95 system. The Office of Management of the Budget has designated the APOs as clearing houses for federal funds and the A-95 rule sets forth duties and responsibilities under Title IV of the Intergovernmental Cooperation Act of 1968 and section 102(2)(c) of the National Environment Policy Act of 1969. Essentially A-95 provides for the coordination of federal projects with state programs. These significant federal programs require that the state plan be acceptable to the APO as a precondition of assistance under a wide catalog of federal assistance programs.

A final facet of the COG's governmental powers is the agency's direct administration of federal funds throughout the region. The present COG administers over a quarter of a millon dollars in emergency employment funds and over $400,000 in federal law enforcement funds under the LEAA program established by the Omnibus Crime Control Act.

The Council of Governments exercises an important planning function as authorized by state statutes. But far more important is the role of the COG in the system of federal funding. The COG must review and make recommendations concerning the application by local governments for federal funding of most capital projects. Of primary consideration is always whether the proposal would be compatible with existing regional planning. The COG's further authority as an APO and under the A-95 system emphasizes the significant impact which the agency has on community development through allocation of federal funds. Given the additional impact of revenue sharing on the importance of federal funding and the fact that federal grants may pay up to 80 percent of the cost of a local facility, it must be recognized that an agency which directly controls the flow of federal funds into a region must be said to be exercising important governmental functions.

D. This Petition also raises questions of whether Salyer-Toltec overruled Hadley v. Junior College District

This petition also raises the issue whether *Salyer* and *Toltec* overrule *Bianchi* v. *Griffing, supra*, and *Hadley* v. *Junior College District*. In *Hadley*, the Supreme Court held that the one-man, one-vote principle applied to the election of trustees to a Junior College District and the Court invalidated the existing apportionment system because it inadequately adjusted for population differentials. The Court rejected a proposed distinction between administrative and legislative officers and concluded that whenever persons are to be selected by popular election to perform governmental functions, the one-man, one-vote principle should be applied to the election scheme. Therefore, in order to determine whether the one-man, one-vote cases are applicable to a given situation, one must determine not only whether the agency performs governmental functions, but also whether the members of the agency are elected.

As explained above, the proposed regional Council of Governments would be statutorily composed of the chief elected official of each member town. Thus, though there is no single election at which representatives to the Council are selected, the membership of the Council is clearly determined by local elections rather than appointment. In reality, when voters in a member town elect the chief elected official of the locality, they will also elect the locality's representative to the new Council of Governments, and the agency should, therefore, be considered an elected body.

Indeed, this was the conclusion reached by the Federal Court of Appeals for the Second Circuit in *Bianchi* v. *Griffing, supra*. In this case a challenge was brought to the apportionment of representatives to the Suffolk County Board of Supervisors. The County Board of Supervisors was composed of the Town Supervisor from each of the five towns in the county. The Town Supervisors were elected

by popular vote in their respective towns and each was entitled to a single nonweighted ballot as a member of the Board of Supervisors.

The Court rejected the argument that the Town Supervisors were merely delegates from their respective towns and not elected officials. Instead, the Court recognized that a voting citizen was electing both his Town Supervisor and a member of the Board of Supervisors. The Court then remanded the case to the District Court to supervise the adoption of a reapportionment plan.

Hadley and *Bianchi*, taken together, establish that the one-man, one-vote principle is to be applied whenever persons are to be selected by popular election to perform general governmental functions and that the method of selection in the present case does in fact constitute popular election. The question now arises, to what extent do *Salyer* and *Toltec* overrule *Hadley* and *Bianchi?*

Although the instant case seems clearly within the purview of *Hadley* and *Bianchi*, the District Court and the Court of Appeals dismissed the complaint, relying at least in part on *Salyer* and *Toltec*, yet never discussing the question of whether *Salyer* and *Toltec* overrule *Hadley* and *Bianchi* or merely create some exception to it. If decisions in the apportionment area are to demonstrate any consistency at all, this question must be resolved.

It is our contention that the representatives to the proposed COG will be chosen in a manner identical to the manner of delegates to the Board of Supervisors in *Bianchi*. Both the U.S. Supreme Court and the Second Circuit have indicated that in the context of the reapportionment cases, representatives selected in this manner should be regarded as elected representatives, and thus, according to *Hadley* v. *Junior College District*, *supra*, the one-man, one-vote principle should apply. In order to satisfy the

strictures of Equal Protection, each representative must represent at least approximately the same number of people. The present structure of the new COG allows no adjustment for population differential; there is an automatic discrimination against large towns; representatives will not represent even approximately the same number of people; and the structure is, therefore, unconstitutional in that it violates plaintiffs' rights to equal protection of the law.

Respectfully submitted,
Igor I. Sikorsky, Jr.
Attorney for Plaintiffs
111 Pearl Street
Hartford, Conn. 06103

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. .....

EDUCATION/INSTRUCCION, INC., ET ALS
Petitioners

vs.

THOMAS MOORE, ET ALS

APPENDIX

IGOR I. SIKORSKY, JR.
Attorney for Petitioners
111 Pearl Street
Hartford, Connecticut 06103

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 520—September Term, 1973.

(Argued March 5, 1974 Decided August 21, 1974.)

Docket No. 73-2507

EDUCATION/INSTRUCCION, INC., BENJAMIN DIXON, JULIA M. RAMOS and A. BOYD HINDS, JR.,

Plaintiffs-Appellants,

v.

THOMAS MOORE, INDIVIDUALLY AND AS CHAIRMAN OF CAPITOL REGIONAL PLANNING AGENCY, ET AL.,

Defendants-Appellees.

Before:

LUMBARD, OAKES and TIMBERS,

Circuit Judges.

Appeal from order entered in the District of Connecticut, T. Emmet Clarie, *District Judge*, dismissing complaint that alleged that Connecticut statute that authorizes regional councils of government denies plaintiffs the equal protection of the laws because such council in the Hartford area is not apportioned on a one man, one vote basis.

Affirmed.

IGOR I. SIKORSKY, JR., Hartford, Conn., *for Plaintiffs-Appellants.*

RALPH G. ELLIOT, Hartford, Conn. (Alcorn, Bakewell & Smith, Hartford, Conn., on the brief), *for Defendants-Appellees.*

PER CURIAM:

On this appeal from an order entered in the District of Connecticut, T. Emmet Clarie, *District Judge,* dismissing a complaint in a civil rights action which sought declaratory and injunctive relief, the sole issue is whether Public Act 521 enacted by the Connecticut General Assembly in 1971, Conn. Gen. Stat. §§ 4-124i through 4-124p (Supp. 1972), which authorizes regional councils of government, denies plaintiffs the equal protection of the laws because such council in the Hartford area is not apportioned on a one man, one vote basis. The district court held that there was no denial of equal protection and dismissed the complaint. We affirm.

Plaintiffs are a non-profit Connecticut corporation organized for educational, charitable and cultural purposes, together with three individual citizens of Connecticut, two of whom reside in the City of Hartford and one in the Town of Windsor. Defendants are the Chairman of the Capitol Regional Planning Agency (CRPA), the Chairman of the Capitol Region Council of Governments (CRCOG), the Secretary of the United States Department of Housing and Urban Development (HUD), the Regional Director of that Department and twenty-nine individuals who are the chief elected officials of the twenty-nine towns which comprise the Capitol Region (i.e. the Hartford area).

In view of the district court's adequate statement of the facts and the controlling law, —— F.Supp. ——, it is sufficient for our purpose merely to state the claims asserted and the district court's rulings thereon with which we agree.

Plaintiffs challenge on equal protection grounds Public Act 821 which provides for the restructuring of the existing CRPA and CRCOG to create a new regional council of government if approved by at least 60% of the towns within the planning region — here, the Hartford area. Each member town of the new council is entitled to one representative on the council, such representative to be the chief elected official of that town.

The gravamen of plaintiffs' claim is that the Act's restructuring of the present regional bodies to create a new regional council in the Hartford area will result in underrepresentation of the City of Hartford on the new council. In the past Hartford has had 5 representatives on CRPA, or 8% of that body's membership. On the new council Hartford will have four representatives. A 1973 amendment gave Hartford four representatives on the council instead of the one initially provided,[1] the three additional council members to be appointed by Hartford's city council. Special Act No. 73-79 (effective May 14, 1973). Hartford has a population of approximately 160,000, or about 24% of the regional population. Thus, plaintiffs argue, Hartford's vote will be greatly diluted, as compared for example with the Town of Andover, whose population is approximately 2,000, which will have one vote. Plaintiffs' claim in essence is that the legislature's failure to apportion the new regional council on a one man, one vote basis denies them the equal protection of the laws in violation of the Fourteenth Amendment.

Application of the one man, one vote principle of *Reynolds* v. *Sims*, 377 U.S. 533 (1964),[2] to various units of

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1 The statement in the District Court opinion that Hartford would have one representative on the new council referred to the provision in the Act prior to the 1973 amendment.

2 *Reynolds* v. *Sims* implemented the Supreme Court's earlier holding in *Baker* v. *Carr*, 369 U.S. 186 (1962), that an assertion of constitutional

government in the State of Connecticut is no stranger to the Connecticut district court. E.g. *Butterworth* v. *Dempsey*, 229 F.Supp. 754 (D. Conn. 1964) (state legislature), *aff'd sub nom. Pinney* v. *Butterworth*, 378 U.S. 564 (1964), *on remand*, 237 F.Supp. 302 (D. Conn. 1964 and 1965); *Kogut* v. *Jepson*, 271 F.Supp. 74 (D. Conn. 1967) (city board of aldermen); *Giordano* v. *Amity Regional High School District #5*, 313 F.Supp. 403 (D. Conn. 1970) (regional board of education).

The critical question raised by defendants' motion to dismiss the complaint for failure to state a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6), is whether the proposed regional council of government for the Hartford area is subject to the one man, one vote requirement. The district court held that it is not. We agree.

The statute in question does not provide for elective bodies.[3] The councils do not exercise general governmental powers, nor do they perform governmental functions, within the meaning of *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), and *Avery* v. *Midland County*, 390 U.S. 474 (1968). Indeed, the councils do not have even the minimal governmental powers found insufficient to invoke the one man, one vote principle in the Supreme Court's

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right, as impaired by malapportionment according to population of representatives in state legislatures, presented a justiciable issue to be determined by the federal courts.

3 The district court did not find it necessary to determine whether members of the council are elected or appointed, since the council clearly does not exercise general governmental powers nor does it perform governmental functions.

We do note, however, that at least some members of the council do not automatically become council members by virtue of their election to office in their respective towns. The three additional members from Hartford, referred to above, are appointed by the city council under Special Act 73-79. And at least the members from West Hartford, Wethersfield and Glastonbury are selected by the respective town councils after the voters elect the councils themselves.

most recent decisions in *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719, 728 n. 7, 729 (1973), and *Associated Enterprises, Inc.* v. *Toltec District*, 410 U.S. 743 (1973).

The powers and functions of the councils are essentially to acquire information, to advise, to comment and to propose.[4] As Judge Clarie aptly put it:

> "To the extent that the [council] is able to provide a forum for an interchange of ideas and an atmosphere conducive to the development of solutions to regional problems which know no geographic boundaries, its importance should not be minimized. But this does not bar recognition of the fact that it would be essentially advisory and non-governmental in both purpose and function, and the type of body which need not be apportioned on a strict numerical basis. As such, the [council] represents the kind of flexible experimentation which the Supreme Court has consistently recognized as being both desirable and constitutionally permissible."

We agree.

We affirm on the well reasoned opinion of Judge Clarie below. —— F.Supp. —— (D. Conn. 1973).[5]

Affirmed.

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4 We agree with the district court's conclusion that there was no issue before that court on the present record as to whether federal statutes or regulations of HUD require fair representation of minority groups on policy making bodies which control or significantly affect the disposition of federal funds. The councils are not conduits of federal funds, but only of information. Since federal certification of the councils here involved has been terminated, regulatory compliance was not an issue before the district court and it is not an issue before us.

5 We note that our dissenting colleague addresses himself primarily to the question of whether a three-judge court should have been convened below. Arguing that such a court should have been convened, the dissent relies heavily upon our recent decision in *Rosenthal* v. *Board of Education*, —— F.2d —— (2 Cir. 1974), slip op. 3603 (May 29, 1974).

(Footnote continued on next page)

OAKES, *Circuit Judge* (dissenting):

I respectfully dissent.

It seems to me that this is another reapportionment case just like *Rosenthal v. Board of Education*, No. 73-2729 (2d Cir. May 20, 1974), slip op. 3603. There, following *Goosby v. Osser*, 409 U.S. 512, 518 (1970), and *Hagans v. Lavine*, —— U.S. ——, 42 U.S.L.W. 4381 (Mar. 25, 1974), we held that the constitutional claims made were not "'so attenuated and unsubstantial as to be absolutely devoid of merit' *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904), or 'no longer open to discussion,' *Magilvra v. Ross*, 215 U.S. 70, 80 (1909)." Slip op. at 3610. In the present case as well injunctive relief is sought. The Connecticut statutes that are involved are of state-wide applicability. For example, Conn. Gen. Stat. Ann. § 4-124c (Supp. for 1974), a provision attacked by appellants, prescribes the formation and composition of all regional councils of elected officials "[w]ithin any planning region of the state . . . ." Sections 4-124i-124p, the principal provisions appellants challenge, relate to the formation and composition of regional councils of governments established "[w]ithin any planning region of the state . . . ."

(Footnote continued)

The dissent's reliance on *Rosenthal*, in our view, is misplaced. In *Rosenthal*, there was no question that the body in question performed substantial governmental functions ("There seems no doubt, as recognized by the district court, that the powers of a central high school district include substantial governmental functions." —— F.2d at ——, slip op. at 3607). Here the proposed regional councils do not have general governmental powers and do not perform governmental functions.

It is axiomatic that a single judge may dismiss a complaint which attacks the constitutionality of a state statute and seeks an injunction against its enforcement if he finds that the complaint presents no substantial constitutional issue. E.g., *Goosby v. Osser*, 409 U.S. 512 (1973). Here the recent decisions of the Supreme Court in *Sayler and Associated Enterprises* "inescapably render the [plaintiffs'] claims frivolous." 409 U.S. at 518. The district court, therefore, properly dismissed plaintiffs' complaint without convening a three-judge court.

The sections relating to regional planning agencies, also under attack here, likewise are state-wide in applicability, again relating to "any planning region of the state . . . ." *E.g.*, Conn. Gen. Stat. Ann. § 8-31a (Supp. for 1974).

Since the question, for three-judge court purposes, is whether a substantial constitutional issue is presented, *Rosenthal* v. *Board of Education, supra*, a discussion of the merits of the plaintiff-appellant's claim is necessary.

On the crucial question whether the new Council of Governments established in the Hartford area (COG) pursuant to the above state provisions exercises general governmental powers within the ambit of *Avery* v. *Midland County*, 390 U.S. 474 (1968), and *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), it seems to me that neither the COG nor its predecessor bodies, the Capitol Region Planning Agency (CRPA) and Capitol Region Council of Governments (CRCOG),[1] can be considered solely in the light of the statutory authority delegated by the State of Connecticut, as the majority considers them. Rather, we must look to the overall role of the agency in question in the federal system as a whole. A regional planning body such as COG, though a creature of state law, is established with a view to its functions under federal law and the federal system.[2] A regional planning agency cannot be looked at while wearing state-oriented blinders when one of its principal purposes is to play a substantial role in the decision-making process involved in the dispensation of federal funds affecting all the citizens of the affected area.

1 The COG was the result of the legislative consolidation under Conn. 1971 Public Act No. 821, Conn. Gen. Stat. Ann. §§ 4-124i-124p, of the then existing CRPA and CRCOG, and its composition is principally the object of attack in this suit.

2 It is not mere coincidence that COG was created meeting the federal requirements for planning agencies which are to serve as Area Planning Offices and thereby qualify for large federal planning grants.

The test of performing governmental powers must be one based on economic reality, not the mechanical application of nineteenth century municipal law. For example, 42 U.S.C. § 3334 requires that any application for a federal loan or grant for the planning or construction of hospitals, libraries, sewers, water and sewage treatment facilities, highways, mass transit, airports or other transportation facilities, recreation, or open-space development must be submitted for review to an areawide agency, which in this case would be COG. COG may then comment and make its recommendations whether the application should be granted or not. 42 U.S.C. § 3334(b)(1). Primary emphasis is given to whether the project would be consistent with comprehensive planning and whether the project contributes to the fulfillment of such planning. *Id.* Supplementary grants, amounting to as much as any original grant, can be made, but only when there is a showing that the project will be "carried out in accord with areawide comprehensive planning and programming." 42 U.S.C. § 3335(b)(3), (c)(1). In making the determination whether a project is in accord with an areawide plan, "the Secretary shall obtain, and give full consideration to, the comments of [the areawide planning bodies]." 42 U.S.C. § 3335(d). In other words, federal law provides a carrot and stick approach to insure that local governments comply with the area plan. Thus, while COG may have no regulatory power under state law to affect local governments, being limited to planning functions, in light of the federal statutes COG's plans themselves can affect local government's abilities to receive federal funds and COG's comments on localities' applications may be altogether determinative.

Not only does the Connecticut COG have an ability to affect the approval of individual municipalities' applica-

tions for grants by the exercise of its planning function, but also the local municipalities are dependent upon the COG for establishment of a proper plan in the first instance. Thus, if COG does not do its job—failing to create an areawide plan or creating an areawide plan which does not meet federal requirements—even a non-member municipality's application for a grant for water and sewer facilities or an open space land program may be disapproved for failure to be part of a proper areawide plan. *See* 42 U.S.C. § 1500b, 3102(c); Appendix 4, Comprehensive Planning Assistance Requirements and Guidelines for a Grant, CPM 6041.1A, U.S. Dept. of Housing and Urban Development (1972).

This control of the purse strings for the building of such a large assortment of facilities is essentially "governmental" in nature in a day and age when municipalities are frequently financially incapable of total self-reliance. In *Hadley, supra,* the power to tax and spend was an important governmental power had by the district; in the year 1974 having a principal hand on the faucet of federal grants must be treated as at least as important as the local power to tax, especially where federal grants may pay up to 80 per cent of facilities' costs, especially since in so many cases the munipicalities' powers to tax are often being exercised to their outer limits.

Beyond this, the COG has important powers under, *e.g.,* the Intergovernmental Cooperation Act, 42 U.S.C. § 4201 *et seq.*, and NEPA, 42 U.S.C. §4321 *et seq.* In this instance it also happens to operate a regional crime squad (with the help of LEAA money), engages in joint purchasing efforts, and otherwise performs important functions that may properly be characterized as governmental in nature.

I am fully cognizant that the water district cases, *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,*

411 U.S. 719 (1973), and *Associated Enterprises* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973), indicate to many that the Supreme Court is backing away from *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and its progeny. I think these cases can be read, however, as dealing only with special purpose districts; even though the water districts in *Salyer* and *Toltec* had broad governmental powers, they were for a limited or special purpose only, relative to the cost and use of water. *See* 58 Cornell L. Rev. 687 (1974). Here, while the COG does not have the direct power to tax, its ability to influence or determine the amount, type, and location of virtually every public service is "governmental" power in its truest sense.

None of this, of course, is to say that there must be the same precision in formulating a proper system of apportionment of representation on a regional planning agency as in a state legislature, just as state legislative reapportionment is not subject to the same strict standards as congressional reapportionment. *E.g.*, *White* v. *Regester*, 412 U.S. 755, 763 (1973). Nor is it to fail to recognize the point underlying Mr. Justice Harlan's dissent in *Avery*, 390 U.S. at 491-98, that in a given case a regional planning agency may be of more concern to the rural members thereof than to the urban residents involved.[3] These are considerations which could be taken into account, however, in establishing a formula which more equally protects or represents the people of Hartford than the one ultimately adopted, under the threat of this very suit, by the Connecticut Assembly by special act.[4]

[3] There is no indication of any sort that this is the case here.

[4] In the case of Hartford (on behalf of the citizens of which the plaintiff-appellants instituted this suit), with a population of approximately 160,000 or 24 per cent of the "Capitol Region," it had five representatives of the 60 on the old CRPA. Before this suit was brought

Under the majority decision today, regional planning agencies for metropolitan areas may be weighted in representational makeup one-sidedly against the urban area in favor of the outlying suburbs and towns, and thus the central cities of states with a state legislature dominated by rural or suburban towns left behind the door when facilities or services requiring federal funding are established.

While the district court did not reach the question and the majority mentions it only in passing, a subsidiary question is whether, since there is no direct election of the members of the new COG as such, this case falls within the rule of *Sailors* v. *Board of Education*, 387 U.S. 105 (1967), that makes the one-man one-vote doctrine of *Reynolds* v. *Sims*, *supra*, inapplicable to non-elected officials. The Connecticut statutes, however, make it very clear that COG will be basically composed of the "chief elected official" from each member town or city. Conn. Gen. Stat. Ann. § 4-124k.[5] The "chief elected official" means "the highest ranking elected governmental official of any town, city or borough," and the term "elected official" means "any selectman, mayor, alderman or member of a

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the Hartford representation on the new COG would have been one of 29, just the same as Andover's (population 2,000). Thereafter the Connecticut legislature passed Special Act No. 73-79 (eff. May 14, 1973) providing Hartford with three additional representatives to COG who are appointed.

5 There is an exception where a town has no *"chief* elected official," in which case the representative to COG is chosen from the elected officials by the legislative body of the town. Conn. Gen. Stat. Ann. § 4-124k (Supp. for 1974). Here, however, only three of the 29 towns comprising the so-called Capitol Region have no "chief elected official." Despite this exception and that specially made in the case of Hartford, the COG is in substantial part elective in nature and composed of elected members. *See Bianchi* v. *Griffing*, 393 F.2d 457 (2d Cir. 1968). *See also Lodico* v. *Board of Supervisors*, 256 F. Supp. 440 (S.D.N.Y. 1966) (reapportionment of County Board of Supervisors ordered where members of Board became such upon election to post of Supervisor by individual towns), approved on this point by *Abate* v. *Mundt*, 403 U.S. 182, 183, 187 (1971).

common council or other similar legislative body . . . or warden of burgess . . . ." Conn. Gen. Stat. Ann. § 4-124i (Supp. for 1974). While the case is one not precisely controlled by precedent in this respect, it seems closest to *Bianchi* v. *Griggs*, 395 F.2d 457 (2d Cir. 1968), where persons elected as town supervisors automatically became members of the county board of supervisors. Here as there the fact is that these officials are *elected*, they are not appointed, and the one office (that of "chief elected official") carries with it automatic membership on the regional council.

From all this it seems clear to me that there is a sufficiently substantial question of constitutionality as to require the convening of a three-judge court, *see Rosenthal* v. *Board of Education*, *supra*, a question neither considered nor decided by the majority or the district court below.

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDUCATION/INSTRUCCION, et al :
:
-vs- : Civil No. 15,085
:
THOMAS MOORE, et al :

RULING ON MOTIONS TO DISMISS

The plaintiffs in this civil rights action are Education/Instruccion, Inc., a non-profit corporation organized under the laws of the State of Connecticut for educational, charitable, and cultural purposes, and three named individuals, Benjamin Dixon, Julia Ramos, and A. Boyd Hinds, Jr., each of whom is a citizen of the United States and the State of Connecticut.[1]

The defendants are Thomas Moore, Chairman of the Capitol Regional Planning Agency, a planning agency organized pursuant to Conn. Gen. Stat. § 8-31a[2] to serve the "Capitol Region;"[3] Richard Blackstone, Chairman of the Capitol Region Council of Governments, a regional agency organized pursuant to Conn. Gen. Stat. §4-124c[4] and consisting of the chief elected officials of each of the towns in the Capitol Region, except the towns of Newington, Somers, Hebron, and Windsor, which have chosen not to be members; George Romney, Secretary of the United States Department of Housing and Urban Development at the commencement of this action, and Lawrence Thompson, the regional director of that Department. Also

named as parties defendant are twenty-nine individuals who are sued individually and in their official capacity as the "chief elected official" of each of the twenty-nine towns which comprise the "Capitol Region."[5]

Jurisdiction is invoked pursuant to the Civil Rights Act of 1964 and 1968, 42 U.S.C. § 2000d, et seq., and 42 U.S.C. § 3601, et seq., 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1331 and 1343(3) and (4); as well as under the fifth and fourteenth amendments to the United States Constitution. The amount in controversy exceeds $10,000 exclusive of interests and costs. The plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief from an alleged infringement of their rights under the Equal Protection Clause of the fourteenth amendment and the aforementioned statutory provisions.

The complaint is drawn in two separate counts.[6] The second count of the complaint, the only count with which the Court is concerned at the present time, challenges the proposed consolidation of the Capitol Regional Planning Agency (hereinafter the CRPA) with the Capitol Regional Counsel of Governments (hereinafter the CRCOG) as authorized by 1971 Public Act 821. Several of the individually-named defendant elected town officials have moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The Court, having reviewed the various memoranda, affidavits,

and briefs filed in connection herewith, and having heard counsels' oral arguments, finds that the defendants' motions to dismiss the second count of the complaint should be granted.

I.

Public Act 821 authorizes a restructuring of the existing CRPA and CRCOG by providing that new regional councils of governments may be created by the adoption of Public Act 821 by the consent of the legislative bodies of at least sixty percent of the towns within a given planning region.[1] According to that Act, each member town of the new CRCOG would be entitled to one representative on the council, who would be the chief elected official of that town.[2] The newly formed CRCOG would succeed to all the statutory powers and duties of the existing CRPA and CRCOG, with the existing CRPA losing its independence and becoming a subdivision of the new CRCOG.[3]

The City of Hartford, one of the twenty-nine towns in the Capitol Region Planning Area and a member of the existing Capitol Region Council of Governments, alleged represents the following percentage of the statistical bases of the CRPA and CRCOG:

	CRPA	CRCOG
1. Total population	23.7%	25.9%
2. Black population	86.8%	80.8%
3. Public school population	19.1%	21.0%

	CRPA	CRCOG
4. Minority (Black and Spanish surname) population	84.3%	86.0%
5. Low and moderate public housing	72.9%	73.7%
6. Minority residents in public housing	99.2%	99.2%
7. Grand list value	23.1%	25.8%
8. Retail sales	27.4%	29.8%
9. Taxable motor vehicles	16.5%	18.2%
10. Dwelling units	28.8%	31.0%
11. Total employment	40.9%	44.0%
12 Manufacturing employment	20.1%	22.4%

At the present time, the City of Hartford has five representatives on the 66 member policy making delegation of the existing CRPA (approximately 8% of the representation on that body). Two of Hartford's representatives are Black, one is Puerto Rican. The thrust of the plaintiffs' argument is that a restructuring of the CRCOG and CRPA in accordance with Public Act 821 would result in a gross under-representation of the City of Hartford, since representation on the new CRCOG would make no adjustment for population variations among member towns. Thus, the City of Hartford with a population of approximately 160,000 persons, or nearly 24% of the Regional population, would have only one representative on the new CRCOG, the same as, for example, the Town of Andover whose population is approximately 2000 persons. Moreover, by diluting Hartford's representation on the CRCOG, there would be a consequent dilution of the representation of low income and minority groups which are centered in that city.

The plaintiff Education/Instruccion complains that it

will be irreparably harmed by a restructuring of the CRPA and CRCOG, in that such a restructuring would result in the under-representation of the low income and minority groups which it purportedly represents. The plaintiffs Ramos and Hinds complain that their votes will be unconstitutionally diluted when they participate in the election of the "chief elected official" of the City of Hartford, who will then automatically become their representative on the new CRCOG by virtue of his office. The plaintiff Dixon joins with the plaintiff Ramos in complaining that a restructuring of the CRCOG would result in the improper representation of the respective minority groups of which they are members. Accordingly, the plaintiffs seek a declaratory judgment that Public Act 821 violates the Equal Protection Clause of the United States Constitution as it applies to the Capitol Region, and injunctive relief prohibiting the defendant Towns from ratifying that Act. 10/

II.

The issue before the Court at this time is not whether federal statutes or regulations of the United States Department of Housing and Urban Development demand fair representation of minority groups on policy making bodies which control

or significantly affect the disposition of federal monies. The sole issue is whether the fourteenth amendment to the United States Constitution requires that the proposed regional council of governments authorized under Connecticut General Statute § 4-124j be apportioned on a "one man-one vote" basis. This Court holds that it does not.

Reduced to its simplest form, the plaintiffs' argument is that the proposed regional council of governments for the Capitol Region creatable under Connecticut General Statute § 4-124j would be an "elective body" under the rationale of Bianchi v. Griffing, 393 F.2d 457 (2d Cir. 1968); charged with the performance of governmental functions within the meaning of Avery v. Midland County, 390 U.S. 474 (1968) and Hadley v. Junior College District, 397 U.S. 50 (1970); and therefore subject to the "one man-one vote" requirement set forth in Wesberry v. Sanders, 376 U.S. 1 (1964) and Reynolds v. Sims, 377 U.S. 533 (1964). The Court finds this argument to be without merit.

In Bianchi v. Griffing, supra, the Court of Appeals faced the issue of whether the one man-one vote requirement was applicable to a County Board of Supervisors which possessed "general governmental powers" and was "representative of most of the general governing bodies of American cities . . . ," but whose membership consisted of "delegates" from each of the ten towns in the county who had previously been elected "Town Supervisors" in locally held popular elections.

Id. at 460-461. Emphasizing that the County Board was in reality a local government, the Court held that "the mandate of the equal protection clause cannot be effectively circumscribed by a local legislative body with general governmental powers . . . simply by labeling [its] members 'delegates.'" Id. at 461.

While dictum in Bianchi lends some support to the plaintiffs' argument that a citizen entering the voting booth to choose the chief elected official of his municipality would at the same time be selecting that municipality's "delegate" to the CRCOG, thus making that proposed body elective in the practical sense, two recent United States Supreme Court decisions, Salyer Land Co. v. Tulare Lake Basin Water Storage District, 41 U.S.L.W. 4350 (March 20, 1973) and Associated Enterprises Inc. v. Toltec Watershed Improvement District, 41 U.S.L.W. 4397 (March 20, 1973), indicate that applicability of the one man-one vote principle does not necessarily follow from a determination that a particular body is constituted through an elective, rather than an appointive, process. Cf. People ex rel. Younger v. County of Eldorado, 487 P.2d 1193, 1209 (Calif. 1971). It is therefore unnecessary to consider the defendants' argument that Bianchi was superseded by Hadley v. Junior College District, supra, and that the members of the CRCOG, like those serving on the Board in Sailors v. Board of Education, 397 U.S. 105 (1967) would be appointive.

[1] Connecticut General Statute § 4-124j provides that

the CRCOG would be voluntary and that a participating municipality could withdraw at any time. To this extent it is similar to the Junior College District considered in Hadley. However, the CRCOG is distinguishable from the District considered in Hadley and the Board of County Commissioners to which the "one man-one vote" principle was held applicable in Avery v. Midland County, supra, in at least one crucial and controlling respect, for in each of those cases, a local unit of government exercised general governmental powers and performed vital governmental functions.

The Board of Commissioners in Avery established and maintained a county jail, made contracts, built roads and bridges, administered the county's welfare system, performed duties in connection with elections, set tax rates, issued bonds, adopted the county's budget, built and ran hospitals, airports, and libraries, established a housing authority, fixed school district boundaries, and determined election districts. Avery, supra, 390 U.S. at 476-477. While the powers and functions of the College District considered in Hadley were not "fully as broad" as those of the Midland County Commissioners, they were nevertheless sufficiently general and important to fall within the Avery decision. They included the power to issue bonds, levy and collect taxes, pass on petitions to annex school districts, and to acquire private property through condemnation. Hadley, supra,

397 U.S. at 53.

By contrast, the powers and functions of the proposed CRCOG are merely to be informed, to advise, comment, and propose. As the successor to the responsibilities and duties of the existing planning agency and council of elected officials,[11] its functions would include the rendering of "advisory reports," recommendations, and development plans concerning grants-in-aid of municipal programs;[12] the studying of proposed zone changes within five hundred feet of the boundary of another municipality, and the issuance of a "purely advisory" impact report;[13] the formulation of development plans and recommendations for the general use of land as "in the opinion of the agency" would be beneficial to the area, and the providing of technical assistance to municipalities within the region;[14] the preparation of "advisory reports" on the regional significance of proposed agreements and compacts between member municipalities;[15] and the issuance of reports on the compatability between regional planning goals and proposed municipal development plans.[16] Such powers and functions are neither qualitatively nor quantitatively comparable to those considered by the Supreme Court in Hadley or Avery.

Moreover, the proposed CRCOG lacks even those few typical governmental powers which the Court in Salyer Land Company v. Tulare Lake Basin Water Storage District, 41 U.S.

L.W. at 4393 n.7, found to be insufficient to constitute "general governmental powers." And like the Tulare Lake District, the CRCOG would provide no

> "general public services such as schools, housing, transportation, utilities, roads or anything else of the type ordinarily financed by a municipal body. . . . There are no . . . shops, hospitals or other facilities designed to improve the quality of life within [its] . . . boundaries and it does not have a fire department, police, buses, or trains." 41 U.S.L.W. at 4393.

Certainly, the maintainance of a Capitol Region Crime Squad, a voluntary association of the law enforcement agencies of the several constituent municipalities, whose function is to provide a source of common experience and expertise and to foster a spirit of cooperation in investigating regional crime problems, cannot be characterized as a traditional and vital governmental function.

To the extent that the CRCOG is able to provide a forum for an interchange of ideas and an atmosphere conducive to the development of solutions to regional problems which know no geographic boundaries, its importance should not be minimized. But this does not bar recognition of the fact that it would be essentially advisory and non-governmental in both purpose and function, and the type of body which need not be apportioned on a strict numerical basis. As such, the CRCOG represents the kind of flexible experimentation which the Supreme Court has consistently recognized as being both desirabl

and constitutionally permissible. Sailors, supra, 387 U.S. at 110-111; Hadley, supra, 397 U.S. at 59; Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra.

Accordingly, the defendants' motions to dismiss the second count of the complaint should be granted, and it is

SO ORDERED.

Dated at Hartford, Connecticut, this 13th day of June, 1973.

T. Emmet Clarie
United States District Judge

FOOTNOTES

1/ The plaintiffs Ramos and Hinds are residents of the City of Hartford. The plaintiff Dixon is a resident of the Town of Windsor. The plaintiff Ramos is a Puerto Rican-American; the plaintiff Dixon is a Black-American; and the plaintiff Hinds is White.

2/ Connecticut General Statute § 8-31a provides:

"Within any planning region of the state as defined or redefined by the director of the office of state planning under the provisions of section 4-124b a regional planning agency may be created by the adoption of sections 8-31a to 8-37a, inclusive, by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region, provided the total number of representatives of such towns, cities or boroughs shall equal sixty per cent or more of the total number of representatives possible of all the towns, cities or boroughs within such region computed as prescribed in this section. Any other town, city or borough within such region may join such regional planning agency by the adoption of said sections by ordinance of its legislative body. Each town, city or borough within such region, except as provided herein, shall be entitled to two representatives on such agency and shall be entitled to additional representation on such agency at the ratio of one representative for each fifty thousand of population or fraction thereof over and above a population of twenty-five thousand as determined by the last-completed federal census. Cities and boroughs with boundaries not coterminous with the boundaries of the town in which they are located, upon adoption of the provisions of said sections, may have one representative on such agency provided the population of the city or borough is greater than fifty per cent of the total population of the town as determined by the last-completed federal census, and the town, upon adoption of the provisions of said sections, may have one representative on such agency. If the total population of the town is greater than twenty-five thousand, the town may elect or appoint the extra representative or representatives as prescribed above, except that, for each fifty thousand population residing in the city or borough, the city or borough may have one additional representative. Noncoterminous cities or boroughs which do not contain fifty per cent or more of the total population

Footnotes - cont'd:

of the town in which they are located shall not adopt the provisions of said sections and shall not join such regional planning agency. Where a planning commission exists in a town, city or borough established under the provisions of the general statutes or any special act, at least one of the representatives from such town, city or borough to the regional planning agency shall be appointed by such planning commission. The other representative or representatives shall be elected or appointed in the manner provided by ordinance adopted by the legislative body of such town, city or borough."

3/ The "Capitol Region" is composed of twenty-nine towns: Andover, Avon, Bloomfield, Bolton, Canton, East Granby, East Hartford, East Windsor, Ellington, Enfield, Farmington, Glastonbury, Granby, Hartford, Hebron, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, Somers, South Windsor, Suffield, Tolland, Vernon, West Hartford, Wethersfield, Windsor, and Windsor Locks.

4/ Connecticut General Statute § 4-124c provides:

"Within any planning region of the state as defined or redefined by the director of the office of state planning under the provisions of section 4-124b, a regional council of elected officials may be created by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region. Any other towns, cities or boroughs within such region may join such council by similar action. The representative to the council from each member town, city or borough shall be elected chief executive of the member town, city or borough or, if such member town, city or borough does not have an elected chief executive, a member of its legislative body chosen by such body to be such representative. Any town, city or borough which has become a member of the council may withdraw upon adoption of an ordinance by its legislative body."

5/ The following twenty-nine individuals are sued in their official capacity as the "Chief elected official" of their respective Towns: George Athanson (Hartford); Robert E. Post (Andover); Edward J. Doyle (Avon); Edward J. Stockton (Bloomfield); Richard Morra (Bolton); Raynard E. Ber-

Footnotes - cont'd:

geron (Canton); William S. Mayer (East Granby); Richard Blackstone (East Hartford); John L. Daley, Jr. (East Windsor); Francis J. Prichard, Jr. (Ellington); Frank Mancuso (Enfield); Jeremiah Wadsworth (Farmington); William S. Rogers (Glastonbury); Otto C. Neumann (Granby); John W. Thompson (Manchester); Peter Crawford (Marlborough); David Moser, M.D., (Rocky Hill); Russell S. Shaw (Simsbury); Abraham Glassman (South Windsor); Daniel F. Sullivan (Suffield); Erwin P. Stoetzner (Tolland); Frank J. McCoy (Vernon); Ellsworth Grant (West Hartford); Welles V. Adams (Wethersfield); Edward A. Savino (Windsor Locks); Elmer A. Mortensen (Newington); Leonard H. Owens (Somers); Robert Geisel (Windsor); and Aaron Rain (Hebron).

The defendants Welles V. Adams of Wethersfield and Elmer A. Mortensen of Newington have filed motions to dismiss and for summary judgment as to themselves individually and as the chief elected officials of their respective towns, alleging in substance that they are merely ceremonial officers who have only a single vote in their town councils. The defendant Mortensen's affidavit further represents that the Town of Newington is not a member of the Capitol Region Council of Governments and that he is not a representative on the Capitol Region Planning Agency. The Court is of the view that its ruling on the motions of the defendant Daniel F. Sullivan, and those defendants who joined and adopted his oral argument at the motion hearings, renders moot the Adams and Mortensen Motions.

6/ The first count of the complaint alleges that the Capitol Region Planning Agency (CRPA) has consistently failed to comply with federal statutes and administrative regulations which require it to provide for low income and minority group representation in regional planning processes, to adopt and enforce an affirmative program for equal employment and open housing, and to consider the problems of minority groups in its evaluations of, and recommendations on, federally funded planning projects. The first count of the complaint also alleges that, despite the CRPA's non-compliance with federal statutes and Department of Housing and Urban Development regulations and guidelines, the defendants Thompson and Romney failed to withdraw certification of the CRPA as the regional Area Planning Office (A.P.O.), the agency through which federal grants are disseminated, and have continued to permit it to receive federal planning grants.

In response to the allegations contained within count one, an investigation was conducted by the Department of Housing and Urban Development. The "Final Investigation Report," which has been filed with this Court, concludes that

Footnotes - cont'd:

there is support for the plaintiffs' allegations that the CRPA failed to comply with federal equal opportunity guidelines, the Civil Rights Acts of 1964 and 1968, and Department of Housing and Urban Development regulations with respect to citizen involvement. The report also concludes that the Hartford Area Office of the Department of Housing and Urban Development, by failing to apply sanctions for CRPA's non-compliance with federal statutes and regulations designed to ensure equality of participation and involvement, "acted in a way which condoned the exclusion of minorities from the CRPA Planning program."

As a result of that investigation, Department of Housing and Urban Development has withdrawn certification of the CRPA as the Area Planning Office and rescinded its federal funding "in order to implement Departmental policy with respect to the Equal Opportunity requirements of the Comprehensive Planning Assistance Program, and the provisions of Title VI and Title VIII of the pertinent Civil Rights Acts."

1/ Connecticut General Statute § 4-124j provides:

"Within any planning region of the state a regional council of governments may be created by the adoption of sections 4-124i to 4-124p, inclusive, by ordinance of the legislative bodies of not less than sixty per cent of all towns, cities and boroughs within such planning region entitled to membership on such council as hereinafter provided. Where any regional council of elected officials, or a regional planning agency, exist within a planning region, a regional council of governments may be created either as hereinabove provided, or by the adoption of said sections by resolution of any such regional council or councils of elected officials and any such regional planning agency, and the ratification of any such resolution by ordinance of the legislative bodies of not less than sixty per cent of all such towns, cities and boroughs. All towns, cities and boroughs within a planning region shall be entitled to membership in such council, including any city or borough with boundaries not coterminous with the boundaries of the town in which it is located. Any nonmember town, city or borough entitled to membership may join the council by the adoption of said sections by ordinance of its legislative body. Any member town, city or borough may withdraw from the council by adoption of an appropriate ordinance of its legislative body to become effective on the date of such adoption; provided, however, that any such withdrawing member shall be obligated to pay its pro rata

share of expenses of operation and pro rata share of funds committed by the council to active programs as of such date of withdrawal."

8/ Connecticut General Statute § 4-124k provides:

"Each member of a regional council of governments shall be entitled to one representative on the council who shall be the chief elected official of such member, or in the absence of any such chief elected official, an elected official appointed in the manner provided by ordinance of the legislative body of such member. Each representative of a member shall be entitled to one vote in the affairs of such council."

9/ Connecticut General Statute § 4-124 l provides:

"(c) Upon the expiration of the transitional period provided for under subsection (b) of this section, the regional council of governments shall succeed to and be responsible for all of the rights, privileges, and obligations, whether statutory or contractual, of any regional council of elected officials, or regional planning agency, or both, within the planning region, and no regional council of elected officials, nor planning agency shall be subsequently created within such planning region, excepted as provided in subsection (d) of this section."

10/ To date at least three towns within the Capitol Region have ratified Public Act 821. They are the Towns of Wethersfield (April 3, 1972); Farmington (May 16, 1972); and Glastonbury (February 28, 1972).

11/ Conn. Gen. Stat. §§ 4-124d and m.

12/ Conn. Gen. Stat. §§ 7-131 d and e.

13/ Conn. Gen. Stat. § 8-3b. Also see § 8-26b.

14/ Conn. Gen. Stat. § 8-35a.

15/ Conn. Gen. Stat. § 8-35d.

16/ Conn. Gen. Stat. § 8-191. Also see § 8-207.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-598

EDUCATION/INSTRUCTION, INC., ET ALS.,
Petitioners,

vs.

THOMAS MOORE, ET ALS.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RALPH G. ELLIOT
Counsel for Respondent
Daniel F. Sullivan
One American Row
Hartford, Connecticut 06103

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

I. Opinions Below

The opinion of the District Court for the District of Connecticut (Clarie, J.) is reported at 379 F. Supp. 1160. The order denying petitioners' motion for rehearing *en banc* in the Court of Appeals is printed in the Appendix hereto.

II. Constitutional Provisions and Statutes Involved

Constitutional Provisions: Fourteenth Amendment to the Constitution of the United States.

Statutes: Connecticut General Statutes §§ 4-124i-p inclusive, as amended by Public Act No. 73-679, Sections 21-

24; §§ 4-124c-f inclusive, as amended by Public Act No. 73-679, Section 18; §§ 8-31a through 8-37b, as amended by Public Act No. 73-679, Sections 30-34; and Special Act 73-79 (all as set forth in the Appendix hereto).

III. Question Presented

Does the United States Constitution require that Regional Councils of Governments authorized under Connecticut General Statutes § 4-124j be apportioned on the basis of one man-one vote?

IV. Statement of the Case

In 1971 the Connecticut General Assembly enacted Public Act No. 821, which became effective July 8, 1971. This statute has been codified as Connecticut General Statutes §§ 4-124i through 4-124p. The only amendments to these sections since their enactment in 1971 are contained in §§ 21-24 inclusive of Public Act No. 73-679, amending as to matters not relevant to the constitutional issue here presented §§ 4-124i, 4-124l(a) and (b), and 4-124p. Public Act No. 73-679 was approved June 27, 1973, subsequent to the District Court decision involved in this case, and became effective July 1, 1973. Sections 4-124i through 4-124p as they read at the time the decision of the District Court was rendered, and §§ 21-24 of Public Act No. 73-679, are reproduced in an appendix to this brief.

General Statutes § 4-124j provides for the creation within any planning region of the state of a regional council of governments. Creation of such a council is accomplished by the adoption of §§ 4-124i through 4-124p by ordinance of the legislative bodies of not less than 60% of all towns, cities, and boroughs within the planning region entitled to membership on the council; or by other means provided in § 4-124j. All towns, cities or boroughs within a planning

region are entitled to membership on the council. Under § 4-124k each member town is entitled to one representative on the council.

The rights and authority of the council are prescribed by § 4-124m. Except as otherwise provided in §§ 4-124i through 4-124p, these consist solely of those vested by the General Statutes in regional councils of elected officials and regional planning agencies. The powers of those two bodies, in turn, are set forth as follows: regional councils of elected officials in §§ 4-124c through f, with § 4-124c having been amended by § 18 of Public Act No. 73-679 as to matters not relevant to the constitutional issue here presented; and regional planning agencies in §§ 8-31 through 8-37b, with §§ 8-31a, 8-32a, 8-33a, 8-35a and 8-37a having been amended by §§ 30-34 inclusive of Public Act No. 73-679 as to matters not relevant to the constitutional issue here presented. All of the aforementioned statutes and the sections of Public Act No. 73-679 amending them are reproduced in an appendix to this brief.

In addition, subsequent to the argument of the motions to dismiss in the District Court, but prior to its June 13, 1973, decision, the General Assembly enacted Special Act No. 73-79, according to the City of Hartford a total of four representatives on the Capitol Region Council of Governments of which Hartford was a member. This special act was approved by the Governor on May 14, 1973; and by virtue of General Statutes § 2-32, became effective on that day. That same day, reargument of respondents' motions to dismiss was heard by the District Court on petitioners' motion to reargue, and enactment of this special act was brought to the attention of the court. Special Act No. 73-79 is reproduced in an appendix to this brief.

The complaint in this action was in two counts. The motions to dismiss from the granting of which petitioners appealed to the Court of Appeals, which affirmed, were as to the Second Count only. The nub of petitioners' claim in

that Count was that the United States Constitution required that representation of the member towns of the Capitol Region Council of Governments—which the complaint contemplated would be created and of which Hartford would be eligible to be a member—be apportioned on the basis of one man-one vote, so that the representation of Hartford on the Council would reflect Hartford's percentage of the population of the member towns on the Council.

Petitioners are a non-profit corporation named Education/Instruccion, Inc. and three Connecticut citizens, two of whom resided in Hartford and one of whom resided in Windsor. The respondents are the chairman of the Capitol Region Planning Agency (hereinafter, CRPA), the chairman of the Capitol Region Council of Governments (hereinafter, CRCOG), the then Secretary of the federal Department of Housing and Urban Development, that department's regional director, and twenty-nine persons sued individually and in their capacities as the chief elected officials of each of the twenty-nine towns which comprise the "Capitol Region". One of these twenty-nine persons is Daniel F. Sullivan, First Selectman of the Town of Suffield; and his was the initially-filed Motion to Dismiss which formed the genesis of this proceeding.

The District Court (Clarie, J.) dismissed the Second Count of petitioners' complaint, and held that the one man-one vote principle of apportionment does not apply to regional councils of governments of the sort authorized by the relevant Connecticut statutes because their powers and functions are neither qualitatively nor quantitatively comparable to those exercised by those entities to which this Court has held the principle to apply. The Court of Appeals affirmed both on this ground and on the additional ground that regional councils of governments are not elective bodies. A petition for rehearing by the Court of Appeals *en banc* was denied, no judge of the Court of Appeals having voted to grant it (Appendix to this brief).

The position of respondents was and is that the nature, and the powers and duties, of regional councils of governments as prescribed and limited by Connecticut's general statutes as hereinabove enumerated do not make of these councils the sorts of bodies as to which the United States Constitution requires apportionment to be made on the basis of one man-one vote.

V. Argument

I. The regional councils of governments creatable under Connecticut General Statutes § 4-124j are not the sorts of bodies to which the constitution requires the one man-one vote electoral principle to apply.

A. Governing case law has defined the sort of body to which one man-one vote must be applied.

The doors of the federal courts, conclusively opened to electoral apportionment suits in *Baker* v. *Carr,* 369 U. S. 186 (1962), have in the twelve and more years since that landmark decision accommodated a steady parade of petitioners seeking either articulation of a principle of apportionment or application to their particular situation of a previously-articulated principle. The latter type is represented by the case at bar. Proceeding from the general tenets of one man-one vote laid down by this court in *Reynolds* v. *Sims,* 377 U. S. 533 (1964) and through the refinement and application of that rule by federal and state courts over the years, petitioners here seek to expand its application for the first time to a non-elective, non-governmental, purely advisory, completely voluntary, and imminently dissoluble cooperative organization designed to help Connecticut's 169 towns think of the "bigger picture" before making their own individual 169 decisions. And to accomplish their end, petitioners seek to torture the carefully wrought pattern of application of the one man-one

vote principle into an amorphous form which might conceivably be found receptive to the advisory group they are here concerned with. At the outset, therefore, it is of prime importance clearly to set forth the governing principles established by this Court and other federal courts on a case by case basis over the years to determine what precisely is the state of the law today, in 1974.

In the first place, the one man-one vote principle applies only to *elective* offices. As this Court stated in *Hadley* v. *Junior College District*, 397 U.S. 50, 56 (1970):

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

In so holding, this Court but reaffirmed the validity of its previous holding in *Sailors* v. *Board of Education*, 387 U.S. 105 (1967) that "a State may in many instances abandon the elective process altogether and allow members of an official body to be appointed, without any regard for the equal protection principle . . ." *Hadley*, p. 61 (Harlan, J., dissenting). Indeed, in *Sailors* this Court held that one man-one vote did not apply with respect to a county school board which was chosen by delegates from the *elected local* boards, and which might or might not be comprised wholly or in part of such elected *local* board members from the constituent towns.

In the second place, the body to which the person is elected must be one performing "governmental functions",

as that phrase has been explained and construed in a series of decisions. In *Avery* v. *Midland County*, 390 U.S. 474, 484-485 (1968), this Court held the one man-one vote principle applied to "units of local government having general governmental powers over the entire geographic area served by the body." It also held irrelevant whether that body's functions are denominated more "administrative" than "legislative," *Id.*, pp. 482-483. *Avery* dealt with the Midland County Commissioners Court established under Texas law. It was expressly found to have

> power to make a large number of decisions having a broad range of impacts on all the citizens of the county. It sets a tax rate, equalizes assessments, and issues bonds. It then prepares and adopts a budget for allocating the county's funds, and is given by statute a wide range of discretion in choosing the subjects on which to spend. In adopting the budget the court makes both long-term judgments about the way Midland County should develop—whether industry should be solicited, roads improved, recreation facilities built, and land set aside for schools—and immediate choices among competing needs.
>
> *Id.*, p. 483.

This Court further found, in arriving at its decision that one man-one vote should apply, that the County Commissioners Court "is representative of most of the general governing bodies of American cities, counties, towns, and villages." *Id.*, at 482.

In *Avery*, too, this Court sounded a cautionary note in application of the one man-one vote principle:

> This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suit-

able for local needs and efficient in solving local problems.

. . .

The *Sailors* and *Dusch* cases demonstrate that the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government. We will not bar what Professor Wood has called "the emergence of a new ideology and structure of public bodies, equipped with new capacities and motivations. . . ." R. Wood, 1400 Governments, at 175 (1961).

Id., at 485.

The Second Circuit Court of Appeals adopted the reasoning of *Avery* in applying one man-one vote to the Suffolk County Board of Supervisors. In *Bianchi* v. *Griffing*, 393 F 2d 457 (CA-2; 1968)—decided the same week as *Avery*—it expressly found the Suffolk board to be "representative of most of the general governing bodies of American cities, counties, towns, and villages". *Bianchi*, at 461. It found that the board possessed "general governmental powers". By county charter it was "the legislative and policy determining body of the county and shall . . . have and exercise all the powers and duties of the county . . ." It had, *inter alia*, the power to levy taxes, incur debts, make appropriations and otherwise support the operation of the county government. A variety of state programs of great importance to county residents were administered by the county.

The next major decision in this line of cases was *Hadley* v. *Junior College District*, 397 U.S. 50 (1970). That case, at page 56, set forth the following holding:

We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Four-

> teenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

Here, this Court found the Junior College District to exercise many of the same sort of powers as had the county commissioners in *Avery*. In a footnote at pages 53-54 it rehearsed some of those powers in *Avery* as follows:

> The Midland County Commissioners established and maintained the county jail, appointed numerous county officials, made contracts, built roads and bridges, administered the county welfare system, performed duties in connection with elections, set the county tax rate, issued bonds, adopted the county budget, built and ran hospitals, airports, and libraries, fixed school district boundaries, established a housing authority, and determined the election districts for county commissioners. *Avery, supra,* at 476-477.

It then found the Junior College District by statute exercising the following powers, with the following constitutional result:

> Appellants argue that since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college, their powers are equivalent, for apportionment purposes, to those exercised by the county commissioners in *Avery*. We feel that these powers, while not fully as broad as those of the Midland County Commissioner, certainly show that the

> trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here.
>
> *Id.*, at 53-54.

Once again, however, the Court issued a cautionary word to those who would simplistically or mechanically apply the one man-one vote principle indiscriminately to all bodies. It cited its previous opinion in *Sailors* to the effect that

> As we said before, "[v]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation." *Sailors, supra,* at 110-111.
>
> *Id.*, at 59.

More recently, this Court has limited the ambit of its rulings in two companion cases: *Salyer Land Co.* v. *Tulare Water District,* 410 U.S. 719 (1973); and *Associated Enterprises, Inc.* v. *Toltec District,* 410 U.S. 743 (1973). *Salyer* involved a California water district board which had statutory power to employ and discharge persons on a regular staff and to contract for the construction of district projects. It was granted by statute the power to condemn private property for use in such projects. It had the statutory authority to issue both general obligation bonds and interest-bearing warrants. It had the power to acquire, improve and operate any necessary works for the storage and distribution of water as well as any drainage or reclamation works connected therewith, and could provide for the generation and distribution of hydroelectric power. It had the statutory power to fix tolls and charges for the use of water and to collect them from all persons

receiving the benefit of the water or other services in proportion to the services rendered. *Salyer,* at 723-724 and 728, n. 7. California courts had held that these districts "are considered exclusively governmental" and that their property was "held only for governmental purposes." By statute they were a "public entity" just as "any other political subdivision." Directors of the district had been held to be "public officers of the state." By statute its works could not be taxed. It enjoyed governmental immunity against suit. *Id.,* at 740 (Douglas, J., dissenting).

Despite all these attributes, however, this Court held that one man-one vote did *not* apply. In so holding, the Court stated as follows:

> The appellee district in this case, although vested with some typical governmental powers, has relatively limited authority. Its primary purpose, indeed the reason for its existence, is to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin. It provides no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body. App. 86, There are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries, and it does not have a fire department, police, buses, or trains. *Ibid.*
>
> *Id.,* at 728-729.

And more pertinently to boards similar in nature and purpose to that in the case at bar, the California Supreme Court has held that a regional planning board whose members were appointed by constituent towns from among local elected officials was not required to be apportioned on the basis of one man-one vote. *People ex rel. Younger* v. *County of El Dorado,* 96 Cal. Rept. 553, 487 P 2d 1193, 1207, 1210 (1971), although the agency in California even

possessed the power to enact ordinances to implement its regional plan. *Id.*, at 1209. This decision has been pertinently and approvingly cited in *Egan* v. *Wisconsin State Board of Vocational T & A Ed.*, 332 F. Supp. 964, 969 (E.D. Wis.; 1971), and *Grivetti* v. *Illinois State Electoral Board*, 335 F. Supp. 779, 790 (N.D. Ill.; 1971), aff'd 406 U.S. 913 (1972).

More recently still, this Court has dismissed an appeal in *Board of Education of Tri-Valley Central School District No. 1* v. *Board of Cooperative Educational Services*, 37 A.D. 2d 330, 325 N.Y.S. 2d 592 (1971); affirmed, 31 NY 2d 1020, 294 NE 2d 657 (1973); appeal dismissed, 414 U.S. 992, 94 S.Ct. 344 (1973). That case involved the Board of Cooperative Educational Services, the purpose of which was to "carry out a program of shared educational services in the schools of the supervisory district and for providing instruction in such special subjects as the commissioner may approve." New York Educational Law, Section 1958. The Board had no taxing power, and its members were elected at a meeting of component school districts, each of which, regardless of population, had identical representation on the Board. The New York Court of Appeals affirmed the decision of the Appellate Division that one man-one vote does not apply to this Board.

This, then, is the state of the law with respect to the applicability of one man-one vote, and it is against the standards set forth in these cases that petitioners' case must be judged. Petitioners fail.

B. Regional councils of governments do not meet the test of eligibility for one man-one vote

At the outset of this discussion, two things should be kept clearly in mind. The first is that the nature, powers and responsibilities of regional councils of governments are created and limited by the specific state statutes set forth in the appendix to this brief. They can be no more

than what those statutes specifically allow. There is no mystical residuum of power from which they can draw authority to do what the statutes do not say they can do. They are solely and completely the creatures of statute, and must look to those statutes for their charter.

The second point to be kept in mind is that the question before this Court is what does the *Constitution* require? It is *not* what does a federal *statute* require. It is *not* what do federal *regulations* or *guidelines* require. It is *not* what local or regional or national HUD office reports or findings or memoranda require. It is what is required by the United States *Constitution*.

Respondent considers these two caveats necessary at this point because they appear clearly to have escaped the attention of petitioners, as reflected in their petition. Petitioners there allude to functions and activities of the Capitol Region Council of Governments (CRCOG) or its predecessor Capitol Region Planning Agency (CRPA) without any reference to the nature of those functions and the incidents of those activities. Likewise, petitioners freely invoke federal statutes and HUD reports and appear, somehow, to equate their mere existence with some constitutional mandate that one man-one vote must apply. They seek to characterize the activities of CRCOG as "governmental" in the belief that, presumably (despite *Salyer*), any body whose activities might be denominated "governmental" *ipso facto* must be apportioned on the basis of one man-one vote.

When the statutes set forth in the appendix to this brief are read with care, they reveal in stark and simple clarity one dominant fact: that the regional councils of governments creatable thereunder, and the regional planning agencies and councils of elected officials whose statutory powers alone they would assume, are purely voluntary and advisory entities, with *no power* to compel area towns to join or to remain, with *no power* to compel member

towns to obey anything that any of the organizations suggest, with *no power* to compel member towns to pay what they are "assessed" for the activities of the organizations, and with *no power* even to continue to *exist* if enough towns either fail to join or decide to quit.

To the extent, therefore, that these agencies perform any functions, they are purely advisory, coordinative or funneling. They provide in limited instances a convenient tool for individual towns to employ in coordinating activities. They provide an occasion for local officials to exchange ideas. They provide a vehicle for voluntary joint action, or volume purchasing, or coordinated grant applications when any town or towns deem this in their best interest to pursue. For those—individuals, federal agencies, or whoever—who wish to feel that Connecticut towns are at least aware of considerations beyond their local borders and try to coordinate and cooperate with their neighbors in their autonomous decisions, these organizations provide an object to which they can point.

These organizations exist in the limited, powerless form they do because that is as far as Connecticut's 169 jealously autonomous towns are thus far willing to go. They provide the vehicle for cooperation and consultation without the lash of compulsion. The statutes can be searched in every corner, and no power—no ultimate governmental decision-making right, responsibility or power—can be found anywhere. Even when the Council's advice or recommendation is contrary to the wishes of a town or city, it has no effect. That is merely one more datum, to be considered or ignored as the decision-maker may choose. In all of the activities petitioners cite there is nothing that in any way concludes a town or its residents in any activity or desire they may entertain. Petitioners have adduced not one scintilla of evidence to demonstrate that these agencies are anything more than convenient tools permitted to exist for the time being by the autonomous muncipalities voluntarily comprising their membership.

A word should here be said about the HUD regulations to which petitioners appear to attach such great importance in their argument. Their principal reliance appears to be placed upon the argument that the regional council of governments (it is unclear whether petitioners mean *all* existing such councils, all *potential* such councils, or the Capitol Region Council of which Hartford is a member) is an Area Planning Office (APO) under various federal statutes relevant to HUD. From this petitioners claim that the council of governments becomes "a powerful regulatory body in the intricate federal system" (Petition, p. 8).

In the first place, the powers and duties of regional councils of governments are not and cannot be subject to change, expansion or contraction by federal statutes, let alone by HUD departmental regulations and designations. They are established and limited by Connecticut state statutes and are and can be no more than those statutes, enacted by Connecticut's legislature, permit them to be.

In the second place, there is not a scintilla of evidence anywhere—including petitioners' petition—to indicate that any regional council of governments in Connecticut except the Capitol Region Council is or ever has been designated an "APO" by HUD (or, indeed, that any council of governments other than the Capitol Region Council of Governments—CRCOG—even exists). Yet petitioners appear to argue that the happenstance that *one* council has been designated an "APO" by HUD metamorphoses *all* potential councils into the sorts of bodies the Constitution requires to be apportioned on a one man-one vote basis.

As to the one agency that arguably ever was an "APO" —the CRPA—the designation was surely ephemeral; for as petitioners note (Petition, p. 3), by their own efforts they caused HUD to decertify CRPA as an "APO". Thus, by petitioners' own averments, the HUD designation which operated with such talismanic qualities to convert

a mere voluntary, advisory, cooperative, consultative group into "a powerful regulatory body in the intricate federal system" has been removed; and with its removal go all the purported attributes with which petitioners sought to invest this localized body. Petitioners have mooted their own case.

Finally, even if one takes petitioners' argument in its most favorable light, even a cursory perusal of the statutes and regulations they cite—the National Environmental Policy Act of 1969, the Demonstration Cities Act (42 U.S.C. § 3334), the Intergovernmental Cooperation Act, HUD circulars MPD 6415.2A, 6415.3, etc.—demonstrates that petitioners ascribe to the designation of "APO" far greater importance than Congress or HUD intended. For all that these statutes and regulations provide is that, whatever body HUD chooses to designate as an "APO", a locality applying for a HUD grant must send to HUD with its application (1) the comments, views and/or recommendations of the "APO" (if there is one) and (2) a statement by the applicant town that it *considered* the "APO's" comments before formally submitting its application to HUD. Thus, *if* HUD designates a regional council of governments as an "APO"—and there is nothing in these federal statutes or regulations requiring the "APO" designation to be granted to *such* councils, or to elective rather than appointive bodies, or to bodies apportioned on a one man-one vote basis—that council's powers change not one whit from those prescribed by Connecticut statutes: advice, comment and recommendations.

These councils of governments are thus a far, far cry indeed from *Avery's* "units of local government having general governmental powers"; or from *Avery's* and *Bianchi's* boards "representative of most of the general governing bodies of American cities, counties, towns, and villages;" or from *Hadley's* "important governmental functions within the district" "general enough and [with]

sufficient impact throughout the district" as to justify requiring application of one man-one vote. There are here not even those incidents of government found *insufficient* in *Salyer*. There is here no statute denominating them a "public entity" just like "any other political subdivision". There is here no exemption of its works from taxation. There is here no statute granting governmental immunity from suit. And for good reason—these bodies have no "works", they undertake no projects for which they might be sued. They are advisory and liaison agencies, pure and simple.

Thus it is that one of the basic criteria for apply ng one man-one vote does not exist: the body can in no way be considered so governmental, as that has been defined in the long line of cases hereinabove cited, as to come within the ambit of the Constitution's mandate.

C. The representatives are not elected.

Petitioners—faced with the absence of any statutory provision for election of the town's representative to the council—attempt imaginatively to scale that constitutional wall with the theory that since the representatives by statute must be elected officials of the town, they must have been elected sometime, and that when the average voter went into the voting booth he knew he was voting not only for the candidate *qua* town official but also for that candidate *qua* council representative, and that therefore this qualifies to make the council representative an elected office, and therefore one man-one vote applies. For this syllogism they place their reliance on the Second Circuit Court of Appeals' opinion in *Bianchi* v. *Griffing*, 393 F 2d 457 (CA-2; 1968). Their reliance is misplaced. That Court of Appeals affirmed.

Bianchi v. *Griffing* dealt with a New York statute providing for a county board of supervisors which, that Court found, was "representative of most of the general govern-

ing bodies of American cities, counties, towns and villages." *Id.*, at 461. That board was by statute composed of the supervisors of each of the county's towns. Those supervisors, in turn, had been elected as supervisors in each of their several towns. Thus it was perfectly logical for the Court to conclude as it did that

> a citizen entering the voting booth chooses at one and the same time a member of the Board of Supervisors and his town supervisor.
>
> *Id.*, at 461.

This is manifestly not the situation with Connecticut's regional councils of governments. Putting aside for the moment the obvious difference between the nature, powers and responsibilities of the two bodies, the identity of the representative on the council is not necessarily ascertainable when local elections occur. General Statutes § 4-124k states that the town's representative

> shall be the chief elected official of such member, or in the absence of any such chief elected official, an elected official appointed in the manner provided by ordinance of the legislative body of such member.

Except in those towns such as Hartford, where the "chief elected official" is the mayor and he is elected separately from members of the city council, the identity of the chief elected official in many of the other towns of the state is unknown and unknowable to the voter entering the voting booth. In West Hartford, Wethersfield and Glastonbury—to take just three examples in the Capitol Region in which petitioners live—the chief elected official is no more than the presiding officer of the town council, and who he or she may be is determined *after* the election and by the council members themselves (and, effectively, by those council members in the majority party on the council). Likewise, the provision for appointment of a repre-

sentative "in the absence" of the chief elected official (in itself, an ambiguous phrase) leaves open the possibility of a local ordinance permitting the town council or chief elected official to delegate *any* elected official in the town to serve in his stead; and under this set of circumstances as well, the voter entering the booth would at best have to assume that anyone he voted for for any office might someday be a council representative. It cannot be imagined that the Court of Appeals intended one man-one vote to apply in such a situation; indeed, by affirming, they rejected such a construction.

Further support for respondent's position can be found in the well-reasoned opinion of the California Supreme Court in *People ex rel. Younger* v. *County of El Dorado,* 96 Cal. Rept. 553, 487 P 2d 1193, 1207, 1210 (1971) and the two federal cases approvingly and pertinently citing it: *Egan* v. *Wisconsin State Board of Vocational T & A Ed.,* 332 F. Supp. 969 (E.D. Wis.; 1971); and *Grivetti* v. *Illinois State Electoral Board,* 335 F. Supp. 779, 790 (N.D. Ill.; 1971), aff'd. 406 U.S. 903 (1972). *Younger* dealt with a planning agency similar to the council here (but with greater powers) which was comprised of members appointed from among elected city council members of the constituent municipalities. The California court, relying on *Sailors* and *Hadley* held:

> The members of the Agency's governing board are appointed; consequently, the fact that they do not "represent" equal numbers of people does not deny those who are "underrepresented" equal protection of the laws.
>
> *Id.,* at 1210.

Respondent submits that the logic and reasoning of *Younger* compel the same result in the case at bar.

Conclusion

The considerations in determining whether to grant petitioners' petition for writ of certiorari are set forth in Rule 19(b) of this Court's Rules as follows:

> Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

A review of petitioners' petition discloses that they have met none of these criteria. They claim the petition raises the question whether this Court's opinions in *Salyer* and *Toltec* overrule its decision in *Hadley* and the Second Circuit's decision in *Bianchi* v. *Griffing*. Clearly, as to the first matter, this Court has dealt fully with *Hadley* in *Salyer* and *Toltec*, and the accommodation of those three decisions with each other and with *Avery* and *Sailors* will not be further elucidated on the facts of this particular case. With respect to *Bianchi*, there is no question presented as to whether an opinion of *this* Court "overrules" an opinion of a Court of Appeals; and furthermore, the very Court that decided *Bianchi* also decided the case at bar, and implicitly, at least, found their fact situations quite distinguishable.

For all that petitioners have said about the agencies involved in this case, they come in the end face to face with

the true nature of the body. It is not elective, but appointive. It does not by the farthest stretch of the imagination possess or exercise governmental powers. It is purely voluntary, and exists at the sufferance of a bare 60% of potential member towns. It serves as an advisor, a funnel, a forum for the exchange of ideas, and a vehicle for cooperative or coordinated local activities. It represents precisely the sort of first, tentative, halting steps in innovation and experimentation with interlocal cooperation and consultation contemplated and encouraged by this Court in *Avery*. What it *may* become in time depends upon what the General Assembly chooses to make of it by statutory amendments. But for the moment—the moment with which this suit must be concerned—those statutes give it a most limited, powerless, nongovernmental character indeed. It clearly does not fall within the class of bodies which the Constitution requires to be apportioned on the basis of one man-one vote.

The petition should be denied.

The undersigned has been authorized by counsel for those hereinafter designated to represent to this Court that, in addition to the respondent Daniel F. Sullivan, First Selectman of the Town of Suffield, the respondent chief elected officers of the following towns join in this brief: Avon, Canton, East Granby, East Windsor, Enfield, Farmington, Glastonbury, Hebron, Manchester, Newington, Simsbury, South Windsor, Vernon, West Hartford, Wethersfield and Windsor.

Respectfully submitted,

RALPH G. ELLIOT
Counsel for Respondent
Daniel F. Sullivan
One American Row
Hartford, Connecticut 06103

ALCORN, BAKEWELL & SMITH
of Counsel

1971 Public Act No. 821

Conn. Gen. Stat. §§ 4-124i-4-124p

Sec. 4-124i. Regional council of governments. Definitions. As used in sections 4-124i to 4-124p, inclusive, (a) "planning region" means a planning region of the state as defined or redefined by the director of the office of state planning under the provisions of subsection (a) of section 4-124b; (b) "regional council of elected officials" means any regional council of elected officials organized under the provisions of chapter 50; (c) "regional planning agency" means any regional planning agency organized under the provisions of chapter 127; (d) "chief elected official" means the highest ranking elected governmental official of any town, city or borough within the state; (e) "elected official" means any selectman, mayor, alderman, or member of a common council or other similar legislative body of any town or city, or warden or burgess of any borough; (f) "council" means a regional council of governments organized under the provisions of sections 4-124i to 4-124p, inclusive; (g) "member" means any town, city or borough within a planning region of the state having become a member of a regional council of governments in accordance with said sections. (1971, P.A. 821, S. 1.) Effective July 8, 1971.

Sec. 4-124j. Creation. Membership. Withdrawal. Within any planning region of the state a regional council of governments may be created by the adoption of sections 4-124i to 4-124p, inclusive, by ordinance of the legislative bodies of not less than sixty per cent of all towns, cities and boroughs within such planning region entitled to membership on such council as hereinafter provided. Where any regional council of elected officials, or a regional planning agency, exist within a planning region, a regional council of governments may be created either as hereinabove provided, or by the adoption of said sections by

resolution of any such regional council or councils of elected officials and any such regional planning agency, and the ratification of any such resolution by ordinance of the legislative bodies of not less than sixty per cent of all such towns, cities and boroughs. All towns, cities and boroughs within a planning region shall be entitled to membership on such council, including any city or borough with boundaries not coterminous with the boundaries of the town in which it is located. Any nonmember town, city or borough entitled to membership may join the council by the adoption of said sections by ordinance of its legislative body. Any member town, city or borough may withdraw from the council by adoption of an appropriate ordinance of its legislative body to become effective on the date of such adoption; provided, however, that any such withdrawing member shall be obligated to pay its pro rata share of expenses of operation and pro rata share of funds committed by the council to active programs as of such date of withdrawal. (1971, P.A. 821, S. 2.) Effective July 8, 1971.

Sec. 4-124k. Representatives of members. Each member of a regional council of governments shall be entitled to one representative on the council who shall be the chief elected official of such member, or in the absence of any such chief elected official, an elected official appointed in the manner provided by ordinance of the legislative body of such member. Each representative of a member shall be entitled to one vote in the affairs of such council. (1971, P.A. 821, S. 3.) Effective July 8, 1971.

Sec. 4-124l. Certification of establishment of council. Transitional period. Reversion to regional council of elected officials. (a) Upon the adoption of sections 4-124i to 4-124p, inclusive, or upon the ratification of a resolution adopting said sections, as provided in section 4-124j, by any town, city or borough entitled to membership on a regional council of governments, the clerk of such town, city or

borough shall immediately prepare and file with the director of the office of state planning a certified copy of the adopting or ratifying ordinance, and, upon receipt of such certified ordinances from not less than sixty per cent of all such towns, cities and boroughs within a planning region, the director of the office of state planning s all certify to such towns, cities and boroughs and all other eligible towns, cities and boroughs within the planning region, that a regional council of governments has been duly established within such planning region. Any subsequent ordinances adopting the provisions of said sections, or effecting the withdrawal from the council of a member shall be similarly filed. Except as hereinafter provided in this section, upon the establishment of a regional council of governments within a planning region in accordance with said sections, no regional council of elected officials nor regional planning agency shall be subsequently established within such planning region.

(b) If at the time of the adoption or ratification of the provisions of said sections by the requisite sixty per cent majority of all eligible towns, cities and boroughs within a planning region there exists within such planning region a regional council of elected officials, or regional planning agency, or both, the existence and activities of any such regional council of elected officials or regional planning agency shall continue uninterrupted for the duration of a transitional period commencing with the certification of the establishment of the council by the director of the office of state planning pursuant to subsection (a) of this section. The chief elected officials of each town, city or borough subsequently adopting said sections, or in the absence of a chief elected official, an elected official appointed by the legislative body of any such member, shall constitute a transitional executive committee of the regional council of governments during such transitional period. Any such transitional executive committee acting under this subsection shall have the following authority and responsibilities:

(i) To draft and propose bylaws for adoption by the council; (ii) to select and propose for election by the council, candidates for offices of the council which may include any one or more members of the transitional committee; (iii) to propose staffing arrangements, for adoption by the council; (iv) to prepare and propose, for adoption by the council, a program of planning and implementation activities, which shall provide for the assumption of such active programs of any such existing regional council of elected officials or regional planning agency, as such executive committee may deem appropriate and a budget for a period not to exceed one year following such transitional period; (v) to propose, for adoption by the council, the date upon which such transitional period shall terminate, which date shall not be later than one year from the date of certification by the director of the office of state planning of the establishment of the council.

(c) Upon the expiration of the transitional period provided for under subsection (b) of this section, the regional council of governments shall succeed to and be responsible for all of the rights, privileges and obligations, whether statutory or contractual, of any regional council of elected officials, or regional planning agency, or both, within the planning region, and no regional council of elected officials nor regional planning agency shall be subsequently created within such planning region, except as provided in subsection (d) of this section.

(d) If at any time after the establishment within a planning region of a regional council of governments the members of the council shall constitute less than forty per cent of all eligible towns, cities and boroughs within such planning region, the council shall thereafter be deemed a regional council of elected officials without the rights and duties of a regional planning agency for so long as and until the membership of the council shall again constitute not less than sixty per cent of all such eligible cities, towns

and boroughs within the planning region. Whenever the members of the council shall constitute less than forty per cent of all such eligible towns, cities and boroughs within the planning region, a regional council of elected officials and a regional planning agency may be established within such region under the general statutes, as amended. (1971, P.A. 821, S. 4.) Effective July 8, 1971.

Sec. 4-124m. Rights and duties of council. Except as otherwise provided in sections 4-124i to 4-124p, inclusive, any regional council of governments shall be entitled to exercise all of the rights and authority and shall be subject to all of the responsibilities and duties provided for in the general statutes, as amended, pertaining to regional councils of elected officials and regional planning agencies. (1971, P.A. 821, S. 5.) Effective July 8, 1971.

Sec. 4-124n. Bylaws. Officers. Committees. Meetings. A regional council of governments shall adopt bylaws for the conduct of its business, including the organization of the regional planning commission created under section 4-124o, and shall annually elect from among the representatives to the council a chairman, a vice-chairman, a secretary, a treasurer, who shall be bonded, and such other officers as may be designated or permitted in the bylaws. The bylaws may provide for alternate representatives of the council to attend and vote at any meeting in place of absent representatives. No representative shall be eligible to serve more than two consecutive terms in the same office. The bylaws shall provide for an executive committee of the council and an executive committee of the regional planning commission and may provide for additional committees including non-voting advisory committees. Meetings of the council shall be called by the chairman or as the bylaws shall otherwise provide and minutes of all meetings of the council, its committees and other official actions shall be filed in the office of the council and shall be of public record. (1971, P.A. 821, S. 7.) Effective July 8, 1971.

Sec. 4-124o. Regional planning commission. Except as hereinafter provided, the planning duties and responsibilities of a regional council of governments, including the making of a plan of development pursuant to section 8-35a, shall be carried out exclusively by a regional planning commission, acting on behalf of and as a subdivision of the council. Each member shall be entitled to a representative on the regional planning commission who shall be an elector of such member and on its planning commission. Such representative shall be appointed by such planning commission, with the concurrence of the appointing authority of such member town. Each regional planning commission representative shall be entitled to one vote in the affairs of such commission but shall not otherwise be entitled to vote in the affairs of the council. All matters referred to the council which by statute or otherwise are required to be referred to and considered by a regional planning agency shall be considered and commented upon by the regional planning commission in accordance with procedures recommended by such commission and adopted by the council with the concurrence of such commission. The council shall have the authority, at the request of a party having referred any such matter to the council's attention, to review and revise, in whole or in part, the comments and recommendations of the regional planning commission as to such matter. If at any time the council is deemed a regional council of elected officials under subsection (d) of section 4-124l, the existence of such regional planning commission shall terminate forthwith. (1971, P.A. 821, S. 6.) Effective July 8, 1971.

Sec. 4-124p. Receipt of funds. Appropriations. Employees. Audits. Annual report. Each regional council of governments established under the provisions of sections 4-124i to 4-124p, inclusive, is authorized to receive for its own use and purposes any funds from any source including the state and federal governments and including bequests,

gifts and contributions made by any individual, corporation or association. Any participating town, city or borough is authorized to appropriate funds for the expenses of such council in the performance of its purposes. Within the amount so received, a council may from time to time engage employees, and contract with professional consultants, municipalities, the state and the federal governments, regional councils of elected officials, regional planning agencies and other intertown, regional or metropolitan agencies, or with any one or more of them, to carry out its purposes. The accounts of any regional council of governments shall be subject to an annual audit under the provisions of chapter 111 and such council shall file an annual report with the clerks of its member towns, cities or boroughs, with planning commissions, if any, of members, and with the director of the office of state planning. (1971, P.A. 821, S. 8.) Effective July 8, 1971.

Public Act 73-679, §§ 21-24

Sec. 21. Section 4-124i of the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: As used in sections 4-124i to 4-124p, inclusive, (a) "planning region" means a planning region of the state as defined or redefined by the MANAGING director, [of the office of state] planning AND BUDGETING, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE under the provisions of [subsection (a) of] section *2* OF THIS ACT [4-124b]; (b) "regional council of elected officials" means any regional council of elected officials organized under the provisions of chapter 50; (c) "regional planning agency" means any regional planning agency organized under the provisions of chapter 127; (d) "chief elected official" means the highest ranking elected governmental official of any town, city or borough within the state; (e) "elected official" means any selectman, mayor, alderman, or member of a common council or other

similar legislative body of any town or city, or warden or burgess of any borough; (f) "council" means a regional council of governments organized under the provisions of sections 4-124i to 4-124p, AS AMENDED BY SECTIONS 21 TO 24 OF THIS ACT, inclusive; (g) "member" means any town, city or borough within a planning region of the state having become a member of a regional council of governments in accordance with said sections.

Sec. 22. Subsection (a) of section 4-124l of the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: Upon the adoption of sections 4-124i to 4-124p, AS AMENDED BY SECTIONS 21 TO 24 OF THIS ACT, inclusive, or upon the ratification of a resolution adopting said sections, as provided in section 4-124j, by any town, city or borough entitled to membership on a regional council of governments, the clerk of such town, city or borough shall immediately prepare and file with the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE a certified copy of the adopting or ratifying ordinance, and, upon receipt of such certified ordinances from not less than sixty per cent of all such towns, cities and boroughs within a planning region, [the] SAID MANAGING director [of the office of state planning] OR HIS DESIGNEE shall certify to such towns, cities and boroughs and all other eligible towns, cities and boroughs within the planning region, that a regional council of governments has been duly established within such planning region. Any subsequent ordinances adopting the provisions of said sections, or effecting the withdrawal from the council of a member shall be similarly filed. Except as hereinafter provided in this section, upon the establishment of a regional council of governments within a planning region in accordance with said sections, no regional council of elected officials nor regional planning agency shall be subsequently established within such planning region.

Sec. 23. Subsection (b) of section 4-124l of the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: If at the time of the adoption or ratification of the provisions of said sections by the requisite sixty per cent majority of all eligible towns, cities and boroughs within a planning region there exists within such planning region a regional council of elected officials, or regional planning agency, or both, the existence and activities of any such regional council of elected officials or regional planning agency shall continue uninterrupted for the duration of a transitional period commencing with the certification of the establishment of the council by the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE pursuant to subsection (a) of this section. The chief elected officials of each town, city or borough subsequently adopting said sections, or in the absence of a chief elected official, an elected official appointed by the legislative body of any such member, shall constitute a transitional executive committee of the regional council of governments during such transitional period. Any such transitional executive committee acting under this subsection shall have the following authority and responsibilities: (i) To draft and propose bylaws for adoption by the council; (ii) to select and propose for election by the council, candidates for offices of the council which may include any one or more members of the transitional committee; (iii) to propose staffing arrangements, for adoption by the council; (iv) to prepare and propose, for adoption by the council, a program of planning and implementation activities, which shall provide for the assumption of such active programs of any such existing regional council of elected officials or regional planning agency, as such executive committee may deem appropriate and a budget for a period not to exceed one year following such transitional period; (v) to propose, for adoption by the council, the date upon which such transitional period shall

terminate, which date shall not be later than one year from the date of certification by the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE of the establishment of the council.

Sec. 24. Section 4-124p of the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: Each regional council of governments established under the provisions of sections 4-124i to 4-124p, AS AMENDED BY SECTIONS 21 TO 24 OF THIS ACT, inclusive, is authorized to receive for its own use and purposes any funds from any source including the state and federal governments and including bequests, gifts and contributions made by any individual, corporation or association. Any participating town, city or borough is authorized to appropriate funds for the expenses of such council in the performance of its purposes. Within the amount so received, a council may from time to time engage employees, and contract with professional consultants, municipalities, the state and the federal governments, regional councils of elected officials, regional planning agencies and other intertown, regional or metropolitan agencies, or with any one or more of them, to carry out its purposes. The accounts of any regional council of governments shall be subject to an annual audit under the provisions of chapter 111 and such council shall file an annual report with the clerks of its member towns, cities or boroughs, with planning commissions, if any, of members, and with the MANAGING director, [of the office of state] planing AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE.

Conn. Gen. Stat. §§ 4-124c-4-124f

Sec. 4-124c (formerly Sec. 32-7a). Regional councils of elected officials. Within any planning region of the state as defined or redefined by the * * * *director of the office of*

state planning under the provisions of section *4-124b*, a regional council of elected officials may be created by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region. Any other towns, cities or boroughs within such region may join such council by similar action. The representative to the council from each member town, city or borough shall be the elected chief executive of the member town, city or borough or, if such member town, city or borough does not have an elected chief executive, a member of its legislative body chosen by such body to be such representative. Any town, city or borough which has become a member of the council may withdraw upon adoption of an ordinance by its legislative body. (February, 1965, P.A. 511, S. 1; 1969, P.A. 628, S. 11.)

Sec. 4-124d (formerly Sec. 32-7b). Duties of council. The council shall consider such matters of a public nature common to two or more members of the council as it deems appropriate, including matters affecting the health, safety, welfare, education and economic conditions of the area comprised by its members. The council shall promote cooperative arrangements and coordinate action among its members and make recommendations therefor to the members and such other public agencies as exist or perform functions within the region. (February, 1965, P.A. 511, S. 2.)

Sec. 4-124e (formerly Sec. 32-7c). Bylaws. Officers. The council shall adopt bylaws for the conduct of its business and shall give such notice of the time and place of meetings and shall keep such records of meetings as shall be set forth in the bylaws. Such bylaws may provide for an alternative representative to attend a meeting in the place of an absent representative. The officers of the council shall consist of a chairman, a vice chairman, a secretary and such other officers as may be designated in the bylaws, each of whom shall be selected from the representatives to the council, and the term of office of each officer

shall be one year. No representative shall be eligible to serve more than two consecutive terms in the same office. (February, 1965, P.A. 511, S. 3.)

Sec. 4-124f (formerly Sec. 32-7d). Receipt of funds. Contracts. Audit. Any regional council of elected officials established under the provisions of section 4-124c is authorized to receive for its own use and purposes any funds from any source, including the state and federal governments, and including bequests, gifts or contributions made by any individual, corporation or association. Any participating town, city or borough is authorized to appropriate funds for the expenses of such council in the performance of its purposes. Within the amounts so received a council may engage employees and contract with professional consultants, municipalities, the state and the federal governments, regional planning agencies and other intertown, regional or metropolitan agencies, or with any one or more of them, and may enter into contracts from time to time to carry out its purpose. The accounts of any regional council of elected officials shall be subject to an annual audit under the provisions of chapter 111. (1967, P.A. 378.)

Public Act 73-679, § 18

Sec. 18. Section 4-124c of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Within any planning region of the state as defined or redefined by the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE under the provisions of section *2* OF THIS ACT [4-124b], a regional council of elected officials may be created by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region. Any other towns, cities or boroughs within such region may join such council by similar

action. The representative to the council from each member town, city or borough shall be the elected chief executive of the member town, city or borough or, if such member town, city or borough does not have an elected chief executive, a member of its legislative body chosen by such body to be such representative. Any town, city or borough which has become a member of the council may withdraw upon adoption of an ordinance by its legislative body.

Conn. Gen. Stat. §§ 8-31a-8-37b

Sec. 8-31a. Formation. Representation. Within any planning region of the state as defined or redefined by the * * * *director of the office of state planning* under the provisions of section *4-124b* a regional planning agency may be created by the adoption of sections 8-31a to 8-37a, inclusive, by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region, provided the total number of representatives of such towns, cities or boroughs shall equal sixty per cent or more of the total number of representatives possible of all the towns, cities or boroughs within such region computed as prescribed in this section. Any other town, city or borough within such region may join such regional planning agency by the adoption of said sections by ordinance of its legislative body. Each town, city or borough within such region, except as provided herein, shall be entitled to two representatives on such agency and shall be entitled to additional representation on such agency at the ratio of one representative for each fifty thousand of population or fraction thereof over and above a population of twenty-five thousand as determined by the last-completed federal census. Cities and boroughs with boundaries not coterminous with the boundaries of the town in which they are located, upon adoption of the provisions of said sections, may have one representative on such agency provided the population of the city or borough is greater than fifty per cent of the total popula-

tion of the town as determined by the last-completed federal census, and the town, upon adoption of the provisions of said sections, may have one representative on such agency. If the total population of the town is greater than twenty-five thousand, the town may elect or appoint the extra representative or representatives as prescribed above, except that, for each fifty thousand population residing in the city or borough, the city or borough may have one additional representative. Noncoterminous cities or boroughs which do not contain fifty per cent or more of the total population of the town in which they are located shall not adopt the provisions of said sections and shall not join such regional planning agency. Where a planning commission exists in a town, city or borough established under the provisions of the general statutes or any special act, at least one of the representatives from such town, city or borough to the regional planning agency shall be appointed by such planning commission. The other representative or representatives shall be elected or appointed in the manner provided by ordinance adopted by the legislative body of such town, city or borough. (1969, P.A. 628, S. 6.) Effective July 1, 1969.

Sec. 8-32a. Jurisdiction. Request for inclusion by contiguous municipality. The area of operation of such agency shall be coterminous with the area of such planning region as defined or redefined by the * * * *director of the office of state planning.* Any town, city or borough which is contiguous to the area of operation of a regional planning agency and is not located within any defined region may, by vote of its legislative body, petition such regional planning agency requesting inclusion in the area of operation of such agency. The regional planning agency shall forward such petition to the * * * *director of the office of state planning* and it shall be accompanied by a report from the regional planning agency with recommendations regarding the same. The * * * *director of the office of state*

planning shall study such petition and report and may redefine such region to include the town, city or borough which has submitted the petition. If the redefinition is made, the area of operation of such agency shall be extended accordingly, and such town, city or borough may join such regional planning agency by adoption of sections 8-31a to 8-37a, inclusive, by ordinance of its legislative body. (1969, P.A. 628, S. 7.) Effective July 1, 1969.

Sec. 8-33a. Officers of agency. Bylaws. Meetings. Annual report. The regional planning agency shall annually elect from among its members a chairman, a treasurer, who shall be bonded, and such other officers as the agency determines. Bylaws shall be adopted by the agency. All meetings of the agency shall be held at the call of the chairman and at such other times as the agency determines. The treasurer shall receive all funds and moneys of the agency and shall pay out the same only in accordance with the bylaws and within limits of such receipts. The agency shall keep minutes of all its meetings and official actions, which minutes shall be filed in the office of the agency and shall be a public record. Each regional planning agency shall file an annual report with the chief executive officers, town, city or borough clerks, as the case may be, and planning commissions, if any, of member towns, cities or boroughs, and with the * * * *director of the office of state planning.* (1969, P.A. 628, S. 8.) Effective July 1, 1969.

Sec. 8-34a. Authority to receive funds. Employees and consultants. Audit. Any regional planning agency established under the provisions of sections 8-31a to 8-37a, inclusive, is authorized to receive for its own uses and purposes any funds from any source, including the state and federal governments, and including bequests, gifts or contributions made by any individual, corporation or association. Any participating town, city or borough is authorized to appropriate funds for the expenses of such agency in

the performance of its purposes. Within the amounts so received an agency may engage employees and contract with professional consultants, the state and the federal governments or with any one or more of them. The accounts of any regional planning agency shall be subject to an annual audit under the provisions of the municipal auditing law. (1959, P.A. 613, S. 5.)

Sec. 8-35a. Plan of development. Each regional planning agency shall make a plan of development for its area of operation, showing its recommendations for the general use of the area including land use, principal highways and freeways, bridges, airports, parks, playgrounds, recreational areas, schools, public institutions, public utilities and such other matters as, in the opinion of the agency, will be beneficial to the area. Any regional plan so developed shall be based on studies of physical, social, economic and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy the coordinated development of its area of operation and the general welfare and prosperity of its people. Before adopting the regional plan of development or any part thereof or amendment thereto the agency shall hold at least one public hearing thereon, notice of the time, place and subject of which shall be given in writing to the chief executive officer and planning commission, where one exists, of each member town, city or borough, and to the • • • *director of the office of state planning.* Notice of the time, place and subject of such hearing shall be published once in a newspaper having a substantial circulation in the region. Such notices shall be given not more than twenty days nor less than ten days before such hearing. Adoption of the plan or part thereof or amendment thereto shall be made by the affirmative vote of not less than a majority of the representatives on the agency. A copy of the plan or of any amendments thereto, signed by the chairman of the agency, shall be transmitted to the chief executive officers, the

town, city or borough clerks, as the case may be, and to planning commissions, if any, in member towns, cities or boroughs, and to the * * * *director of the office of state planning.* The regional planning agency shall assist municipalities within its region and state agencies and may assist other public and private agencies in developing and carrying out any regional plan or plans of such regional planning agency. The regional planning agency may provide technical assistance to municipalities within its region and other public agencies under such terms as it may determine, provided, prior to entering into an agreement for assistance to any municipality or other public agency, the regional planning agency shall have adopted a policy governing such assistance. The regional planning agency may be compensated by the municipality or other public agency with which an agreement for assistance has been made for all or part of the cost of such assistance. (1967, P.A. 232; 1969, P.A. 628, S. 9.) Effective July 1, 1969.

Sec. 8-35b. Recommendations for metropolitan, regional or intermunicipal arrangements. A regional planning agency may make recommendations to the municipalities within its area of operation for such metropolitan, regional or intermunicipal arrangements for the most efficient and economical development or operation of public facilities or services as it deems desirable for the economic and social welfare of the region and the municipalities located therein. (1967, P.A. 862, S. 1.)

Sec. 8-35c. Assistance to municipalities planning joint operation of facilities. Whenever any two or more municipalities are considering the feasibility of jointly developing or operating a physical facility and services, the regional planning agency may, upon request from such municipalities as are within its area of operation, render assistance by making studies and recommendations and may make contractual arrangements with the several parties for the conduct of such studies. (1967, P.A. 862, S. 2.)

Sec. 8-35d. Referral of proposal for interlocal agreement or formation of district to regional planning agency. Before any two or more municipalities may join together through interlocal agreement or formation of a district under any provisions of the general statutes or of any special act for purposes of jointly developing or operating physical facilities and services for the performance of any municipal function which under any provisions of the general statutes or of any special act they may perform separately, such municipalities shall refer such proposal to the regional planning agency or agencies within whose area of operation such municipalities may be located. Such agency or agencies shall study such proposal and shall render an advisory report of the regional significance of the proposal. If the regional planning agency does not report within ninety days after such referral, the municipalities may proceed without such report. (1967, P.A. 862, S. 3.)

Sec. 8-36a. Withdrawal from agency. Any town, city or borough which has adopted the provisions of sections 8-31a to 8-37a, inclusive, may withdraw from such regional planning agency but only six months after the legislative body of such town, city or borough has declared its intent to so withdraw by enactment of an ordinance by its legislative body. * * * (1967, P.A. 764.)

Sec. 8-37a. Termination of agency. Subject to the provisions of section 8-36a, whenever the total number of representatives of the member towns, cities or boroughs of any regional planning agency established under sections 8-31a to 8-37a, inclusive, is less than forty per cent of the possible total number of representatives of all the towns, cities or boroughs within the planning region defined by the * * * *director of the office of state planning* embracing such regional planning agency, such regional planning agency shall cease to exist. (1969, P.A. 628, S. 10.) Effective July 1, 1969.

Sec. 8-37b Powers and duties of prior authorities. Any regional planning authority established prior to January 1, 1957, under the provisions of chapter 46 of the general statutes, revision of 1949,

(a) may continue to exist and shall have all the powers and duties as provided in said chapter, or

(b) may vote to act in accordance with the provisions of sections 8-31a to 8-37a, inclusive, by a majority vote of the members of the board thereof and shall thereafter be subject to said sections. Any regional planning authority established after January 1, 1957, shall conform to the provisions of said sections. (1959, P.A. 613, § 9.)

Public Act 73-679, §§ 30-34

Sec. 30. Section 8-31a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Within any planning region of the state as defined or redefined by the MANAGING director, [of the office of state] planning AND BUDGETING, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE under the provisions of [the] section 2 OF THIS ACT [4-124b] a regional planning agency may be created by the adoption of sections 8-31a to 8-37a, AS AMENDED BY SECTIONS 30 TO 34 OF THIS ACT, inclusive, by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region, provided the total number of representatives of such towns, cities or boroughs shall equal sixty per cent or more of the total number of representatives possible of all the towns, cities or boroughs within such region computed as prescribed in this section. Any other town, city or borough within such region may join such regional planning agency by the adoption of said sections by ordinance of its legislative body. Each town, city or borough within such region, except as provided herein, shall be entitled to two representatives on such agency and shall be entitled to additional representation on such agency at the ratio of one

representative for each fifty thousand of population or fraction thereof over and above a population of twenty-five thousand as determined by the last-completed federal census. Cities and boroughs with boundaries not coterminous with the boundaries of the town in which they are located, upon adoption of the provisions of said sections, may have one representative on such agency provided the population of the city or borough is greater than fifty per cent of the total population of the town as determined by the last-completed federal census, and the town, upon adoption of the provisions of said sections, may have one representative on such agency. If the total population of the town is greater than twenty-five thousand, the town may elect or appoint the extra representative or representatives as prescribed above, except that, for each fifty thousand population residing in the city or borough, the city or borough may have one additional representative. Noncoterminous cities or boroughs which do not contain fifty per cent or more of the total population of the town in which they are located shall not adopt the provisions of said sections and shall not join such regional planning agency. Where a planning commission exists in a town, city or borough established under the provisions of the general statutes or any special act, at least one of the representatives from such town, city or borough to the regional planning agency shall be appointed by such planning commission. The other representative or representatives shall be elected or appointed in the manner provided by ordinance adopted by the legislative body of such town, city or borough.

Sec. 31. Section 8-32a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: The area of operation of such agency shall be coterminous with the area of such planning region as defined or redefined by the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE. Any

town, city or borough which is contiguous to the area of operation of a regional planning agency and is not located within any defined region may, by vote of its legislative body, petition such regional planning agency requesting inclusion in the area of operation of such agency. The regional planning agency shall forward such petition to the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE and it shall be accompanied by a report from the regional planning agency with recommendations regarding the same. The MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE shall study such petition and report and may redefine such region to include the town, city or borough which has submitted the petition. If the redefinition is made, the area of operation of such agency shall be extended accordingly, and such town, city or borough may join such regional planning agency by adoption of sections 8-31a to 8-37a, As AMENDED BY SECTIONS 30 TO 34 OF THIS ACT, inclusive, by ordinance of its legislative body.

Sec. 32. Section 8-33a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: The regional planning agency shall annually elect from among its members a chairman, a treasurer, who shall be bonded, and such other officers as the agency determines. Bylaws shall be adopted by the agency. All meetings of the agency shall be held at the call of the chairman and at such other times as the agency determines. The treasurer shall receive all funds and moneys of the agency and shall pay out the same only in accordance with the bylaws and within limits of such receipts. The agency shall keep minutes of all its meetings and official actions, which minutes shall be filed in the office of the agency and shall be a public record. Each regional planning agency shall file an annual report with the chief executive officers, town, city or borough clerks, as the case may be, and plan-

ning commissions, if any, of member towns, cities or boroughs, and with the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE.

Sec. 33. Section 8-35a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Each regional planning agency shall make a plan of development for its area of operation, showing its recommendations for the general use of the area including land use, principal highways and freeways, bridges, airports, parks, playgrounds, recreational areas, schools, public institutions, public utilities and such other matters as, in the opinion of the agency, will be beneficial to the area. Any regional plan so developed shall be based on studies of physical, social, economic and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy the coordinated development of its area of operation and the general welfare and prosperity of its people. Before adopting the regional plan of development or any part thereof or amendment thereto the agency shall hold at least one public hearing thereon, notice of the time, place and subject of which shall be given in writing to the chief executive officer and planning commission, where one exists, of each member town, city or borough, and to the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE. Notice of the time, place and subject of such hearing shall be published once in a newspaper having a substantial circulation in the region. Such notices shall be given not more than twenty days nor less than ten days before such hearing. Adoption of the plan or part thereof or amendment thereto shall be made by the affirmative vote of not less than a majority of the representatives on the agency. A copy of the plan or of any amendments thereto, signed by the chairman of the agency, shall be transmitted to the chief executive officers, the town, city or borough clerks, as

the case may be, and to planning commissions, if any, in member towns, cities or boroughs, and to the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE. The regional planning agency shall assist municipalities within its region and state agencies and may assist other public and private agencies in developing and carrying out any regional plan or plans of such regional planning agency. The regional planning agency may provide technical assistance to municipalities within its region and other public agencies under such terms as it may determine, provided, prior to entering into an agreement for assistance to any municipality or other public agency, the regional planning agency shall have adopted a policy governing such assistance. The regional planning agency may be compensated by the municipality or other public agency with which an agreement for assistance has been made for all or part of the cost of such assistance.

Sec. 34. Section 8-37a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Subject to the provisions of section 8-36a, whenever the total number of representatives of the member towns, cities or boroughs of any regional planning agency established under sections 8-31a to 8-37a, AS AMENDED BY SECTIONS 30 TO 34 OF THIS ACT, inclusive, is less than forty per cent of the possible total number of representatives of all the towns, cities or boroughs within the planning region defined by the MANAGING director, [of the office of state] planning AND BUDGETING DIVISION, DEPARTMENT OF FINANCE AND CONTROL, OR HIS DESIGNEE embracing such regional planning agency, such regional planning agency shall cease to exist.

Special Act 73-79

AN ACT PROVIDING FOR ADDITIONAL REPRESENTATIVES ON A REGIONAL COUNCIL OF GOVERNMENTS FOR THE CITY OF HARTFORD AS THE CORE CITY OF THE CAPITOL REGION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) In addition to the representatives provided for under sections 4-124k and 4-124o of the 1971 noncumulative supplement to the general statutes, the city of Hartford, as the core city of the capitol region, and as a member of a regional council of governments established within said region pursuant to sections 4-124i to 4-124p, inclusive, of said supplement, shall have three additional representatives appointed by its legislative body on such council and three additional representatives appointed by its legislative body on the regional planning commission organized under such council.

Sec. 2. (NEW) Such council shall establish a nonvoting advisory committee to be known as a Regional Forum, appointed in accordance with the bylaws of the council, which shall (a) provide the council and its regional planning commission with broad-based regional input into its policies and programs; (b) provide the citizens and agencies in the region with the opportunity to raise issues of regional import for the council's consideration, and (c) have its own rules, internal vote and functions as provided in the bylaws of the council.

Approved May 14, 1973

Order Denying Petitions for Rehearing *En Banc*.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Twenty-third day of October, one thousand nine hundred and seventy-four.

Docket No. 73-2507

EDUCATION/INSTRUCCION, INC., BENJAMIN DIXON, JULIA M. RAMOS and A. BOYD HINDS, JR.,

Plaintiffs-Appellants,

v.

THOMAS MOORE, Individually and as Chairman of Capitol Region Planning Agency, et al.,

Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellants, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

IRVING R. KAUFMAN
Chief Judge
Irving R. Kaufman

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Twenty-third day of October, one thousand nine hundred and seventy-four.

Present:
HON. J. EDWARD LUMBARD,
HON. JAMES L. OAKES,
HON. WILLIAM H. TIMBERS,
Circuit Judges.

Docket No. 73-2507

EDUCATION/INSTRUCCION, INC., BENJAMIN DIXON, JULIA M. RAMOS and BOYD HINDS, JR.,
Plaintiffs-Appellants,

v.

THOMAS MOORE, Individually and as Chairman of Capitol Region Planning Agency, et al.,
Defendants-Appellees.

A petition for a rehearing having been filed herein by counsel for the appellants,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
A. Daniel Fusaro
Clerk